

Legal Certificate of Electronic Certificate Based on Implementation Regulation of Law Number 11 of 2020 Concerning Work Creation

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Abstract

This study entitled Legal Certainty of Electronic Certificates Based on the Implementing Regulations of Law Number 11 of 2020 concerning Job Creation with 2 (two) main problems, namely: (1) What is the strength of proof of electronic certificates in the event of a land dispute regarding dual certificates? (2) How about legal certainty. Electronic certificates in Indonesia before and after the enactment of Law Number 11 of 2020 concerning Job Creation? This research is a type of legal research with normative juridical research methods. Besides, this research uses a statutory approach and a conceptual approach. The results of this thesis research indicate that the land registration procedure to obtain an electronic certificate must refer to the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency no. 1 of 2021 concerning Electronic Certificates in accordance with the provisions of article 2 regarding the implementation of electronic land registration and also explained in article 6 for land that has not been registered and the replacement of certificates into electronic certificates for those that have been registered and clarified again in Government Regulation number 18 of 2021 concerning Management Rights, Land Rights, Flat Units and Land Registration, article 84 jo. Article 87 specifically regulates the implementation of land registration but for land that has not been registered and does not have a certificate, the registration process refers to Government Regulation number 24 of 1997 concerning Land Registration because only in the regulation it is regulated about land registration for the first time and systematic land registration until registration.

Keywords

legal certainty; electronic certificate; job creation act



I. Introduction

Land has a very important function for human life, the rights to land ownership are also regulated by the constitution (the 1945 Constitution) which applies in Indonesia as a State of Law. As for the constitution (the 1945 Constitution) the regulation of land uses the term agrarian which has a wider scope, namely earth, water and the natural resources contained therein. The guarantee of legal certainty to be realized in this land registration includes certainty of the status of registered rights, certainty of the subject of rights, and certainty of the object of rights. This land registration produces a Land Certificate or certificate of land rights as valid evidence. In Indonesia, certificates of land rights act as

strong evidence as confirmed in Article 19 paragraph 2 letter C of the Basic Agrarian Law which states that registration of land is given proof of rights certificates, which act as strong evidence and Article 32 paragraph 1 of Government Regulation Number 24 of 1977 concerning Land Registration, namely a certificate is a letter of proof of rights that applies as a strong proof of physical data and juridical data contained therein, as long as the physical data and juridical data are in accordance with the existing data. in the letter of measurement and the book of land rights concerned.

Basically, a land certificate is a proof of title in the form of a copy of the land book and a measuring document that has been put together. Certificates are the end product of all land registration processes; the most important thing is the electronic registration process from start to finish. Certificates can be issued in physical form/printed paper or digital/electronic.

Regarding the implementation of electronic certificates, it also refers to Law Number 11 of 2008 concerning Electronic Information and Transactions, that in the operation of electronic systems it is also protected and recognized by the Act, so that electronic information, electronic documents and/or their printed results are legal evidence. which is valid and is also an extension of valid evidence in accordance with the Civil Procedure Law applicable in Indonesia.

In addition, the implementation of electronic certificates is also regulated in Law Number 11 of 2020 concerning Job Creation, in article 147 it is stated that proof of land rights, ownership rights to flat units, management rights, and mortgage rights, including deed of transfer of rights on land and other documents related to land can be in electronic form, and in article 175 paragraph 3 it is stated that:

1. Government officials and/or bodies may make decisions in electronic form.
2. Decisions in electronic form must be made or submitted against decisions processed by the electronic system determined by the central government.
3. Decisions in electronic form have the same legal force as written decisions and are effective from the date of receipt of the decision by the party concerned.
4. In the event that the decision is made in electronic form, the decision is not made in written form.

The background of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency choosing electronic certification is because it is felt that the efficiency and transparency of land registration needs to be improved, the management of land records and certificates will be more secure, the intensity of derivative services will increase, in direct proportion to the increase in the number of registered lands through Land Registration. Complete Systematic, increasing natural disasters, such as floods, earthquakes, and landslides can also affect because sometimes as a result of these disasters many land certificates are then lost and damaged so that if they are in electronic form they will be stored safely, in the current era of modernization trends are also increasingly There are many demands for technology development, this has been proven by the success of other government agencies such as the Ministry of Economy with OSS (Online Single Submission), Ministry of Law and Human Rights with electronic fiduciary, and so on. other private sectors in terms of service modernization, in a seminar held by the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency in the current Covid-19 pandemic era, it will greatly reduce the public's obligation to come to the Land Agency office by up to 80% because everything can be carried out with equipment. electronic.

The problems contained in this legal research are about the legal certainty of the electronic certificate, and the strength of proof of the electronic certificate if there is a land

dispute because the form of electronic certificate in the legislation has not been regulated, considering that what is meant by a certificate in Government Regulation Number 24 Year 1997 concerning land registration are letters. Thus, this research is carried out with urgency, namely to provide legal certainty regarding the holding of national land certification in the form of electronic certificates. The unclear position and legal certainty of electronic certificates is what underlies the author to make a study entitled "Legal Certainty of Electronic Certificates Based on the Implementing Regulations of Law Number 11 of 2020 concerning Job Creation".

II. Review of Literature

2.1 Strength of Evidence of Electronic Certificates in the Case of Land Disputes regarding Dual Certificates

In the context of electronic information and documentation systems as well as electronic land registration certificates, there are at least two legal issues faced, first, provisions regarding electronic information and documentation are not recognized as electronic evidence in court cases based on the decisions of the Constitutional Court, automatically information and documentation Land electronics cannot serve as evidence, with legal consequences regarding its legality and validity. Second, Article 6 of the Electronic Information and Transaction Law affirms that "Electronic Information and/or 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 so as to explain a situation". Data, electronic information and electronic documents containing data on rights holders, physical data and juridical data on land parcels, or "land books, documents, and documents" are excluded information. Can only be accessed and displayed to rights holders and government agencies that need it, certain data that can be accessed by the public. Thus, it will be difficult to apply the provisions of Article 6 of the Electronic Information and Transaction Law.

According to the Directorate General of Determination of Rights and Land Registration of the Ministry of Agrarian Affairs and Spatial Planning/Head of the National Land Agency stated that electronic certificates will provide added value, including:

- 1) efficiency; services for electronic documents will automatically be carried out electronically, thereby increasing efficiency at the input, process and output nodes, thereby creating time efficiency in services;
- 2) minimize physical encounters; will have an impact on minimizing land service transaction costs;
- 3) accountability and accessibility; recording all aspects of land registration electronically will increase the accountability of the Certificate, and increase the accessibility of information;
- 4) reduce the intervention of unauthorized parties; all information nodes are protected by security, so that land rights holders can detect if there is an intervention in their land rights;
- 5) Active contribution in improving Indonesia's investment climate; paperless land document management will give high value to the Registering Property aspect in ranking Ease of Doing Business Indonesia.

Then how is the evidentiary strength of the certificate of land rights itself, as in an authentic deed, this certificate of land rights provides between the parties and their heirs and those who have rights from them a perfect binding proof. Binding in the sense that what is explained in the certificate must be believed by the judge to be true, in the event that what is not true about the certificate cannot be proven. Perfect means no additional evidence is needed.

Then the strength of proof of this certificate of land rights can be viewed from 3 angles, namely: (a) The strength of Formal Evidence, namely proving that the official who issued the certificate, has explained the things contained in the certificate concerned. (b) What is described in the certificate is really in accordance with the actual situation. For example regarding the location of the land, the area and the subject entitled to the land. Because it is referred to as binding physical evidence. (c) The power of external evidence is to prove not only the parties concerned, but also to third parties, in this case if the certificate of land rights is used as evidence in court, the judge must believe in its truth.

In the process of registering a plot of land owned for the first time, of course, it must be based on what is determined and with a written procedure where this is the beginning of the data collection process based on regulations regarding land registration. namely Article 12 of Government Regulation number 24 of 1997 concerning Land Registration which mentions several procedures for registering Land for the first time, including the following:

- 1) Physical data processing and activities;
- 2) Proof of rights and bookkeeping;
- 3) Issuance of Certificates;
- 4) Presentation of physical and juridical data;
- 5) Storage of general lists and documents;

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For more details, let us review the provisions of Article 19 in conjunction with Article 23 of the Basic Agrarian Law which states, "that the certificate of land rights is a strong means of proof". a positive publication system, people absolutely have the truth of the information contained in the certificate. The opposite is a negative system, in this system the government does not guarantee the truth of the data contained in the deed it registers. In doing the registration, it is passive.

The basic agrarian law which is the parent of proof of land rights so that in accordance with the provisions of article 19 paragraph (2) letter c the main agrarian law on certificates is the strongest evidence and also in the provisions of Government Regulation number 24 of 1997 concerning Land Registration, namely article What is meant by "evidence" is in the form of proof of control over land rights, such as letters of measurement, maps of land parcels, and land certificates which can be used as legal evidence according to civil procedural law. Further provisions are explained in various statutory regulations that are still in force and used today in relation to authentic evidence of land rights control.

III. Result and Discussion

3.1 Legal Certainty of Electronic Certificates in Indonesia Before and After the Enactment of Law Number 11 of 2020 concerning Job Creation

Of the various series of land registration for the first time, of course, there are various supporting aspects that must be met when wanting to do land registration, while the implementation of land registration for the first time is based on the provisions of Article 13 of Government Regulation number 24 of 1997 concerning Land Registration, the implementation of which is regulated as follows:

- a) Land registration is carried out for the first time through systematic land registration and sporadic land registration.
- b) Systematic land registration is based on a work plan and is carried out in areas determined by the minister.
- c) In the event that a village or sub-district has not been designated as a systematic land registration area as referred to in paragraph (2), the systematic land registration as referred to in paragraph (2) shall be registered through sporadic land registration.
- d) Sporadic land registration is carried out at the request of interested parties. 4

In the provisions of Government Regulation number 24 of 1997 concerning Land Registration, it is stated that there are several processes carried out to obtain land certificates including:

a. Measurement and Mapping

Physical data collection and management is a series of activities carried out to ensure that the data or form in the field does not differ from what is registered, including the following:

- 1) For the purposes of collecting and processing physical data, measurement and mapping activities are carried out;
- 2) Preparation of registration base map;
- 3) Determination of land parcel boundaries;
- 4) Measurement and mapping of land parcels and making of registration maps;
- 5) Preparation of land registers;
- 6) Preparation of measuring documents; 5

b. Creation of Registration Base Map

A map that contains the basics in the method as well as elements such as rivers, buildings or roads as well as benchmarks that are used as boundaries for each parcel of land is called a registration base map. While the maps listed on geographic benchmarks such as rivers, roads, tall buildings, the shape of the earth's surface, and other important things are called land maps. Then it is explained that the registration map is a description of a form or plot of land that is carried out for the purpose of recording. Based on the regulations stipulated by the government in articles 15 and 16 of Government Regulation number 24 of 1997 it is explained that:

- 1) The process of registering land in a systematic way as stipulated in the provisions of Article 13 paragraph (1), which is carried out initially by making a map as the basis for registering it.
- 2) In areas that are still not considered to be land registration areas in a systematic manner carried out by the National Land Agency, a registration base map must be provided for the needs of the land being registered by means of making efforts to provide a registration base map for the purposes of mass land registration for the first time.

The provisions in Article 16 of Government Regulation number 24 of 1997 concerning Land Registration are clearly stated in several points which are contained therein as follows:

- 1) In an effort to make a base map for registration through the National Land Agency, it is carried out at every district or city level II points regarding the installation, calculation, and location description.
- 2) In terms of measuring in order to make a base map for land registration as stated in paragraph (1), it acts as an initial framework, which is tied to the existing national technical basis. If in an area there are no or no national base points as referred to in paragraph (2),
- 3) in carrying out measurements for the creation of a registration base map, temporary local technical base points can be used, which are then tied into national technical base points.
- 4) The registration base maps as referred to in paragraphs (2) and (3) shall serve as the basis for making registration maps.
- 5) Further provisions regarding measurement and mapping of national technical base points and preparation of registration base maps shall be stipulated by the Minister.

c. Land Register

Based on Government Regulation number 24 of 1997 concerning Land Registration, the steps are carried out to find out the amount of land until the numbering of the land deed is in accordance with the provisions of article 21 which reads:

- (1) Land parcels or parcels which have been mapped or have their registration number affixed to the registration map shall be recorded in the land register. (2) The form, content, method of filling out, storing and maintaining the land register shall be regulated by the minister.

d. Making Measurement Letters

The process of making a measuring document is in accordance with the provisions of article 22 in Government Regulation number 24 of 1997 concerning Land Registration which reads:

- 1) For parcels of land as referred to in Article 9 paragraph (1) letters a, b and c which have been measured and mapped in the registration map, a measuring letter is made for the purposes of land registration.
- 2) For sporadic land registration areas for which a map for registration of a certificate of registration is not available, it is made from the results of the measurements as referred to in Article 20.
- 3) The form, content, method of filling, storage and maintenance of the measuring document shall be determined by the Minister.

e. Proof of Rights and Bookkeeping

Proof of new rights, namely the process of issuing evidence related to land parcels that have been controlled for the purpose of land registration, as for the proof of new rights, is contained in Article 23 of Government Regulation number 24 of 1997 concerning Land Registration:

- 1) Determination of the granting of rights from the official authorized to grant the relevant rights according to the applicable provisions if the granting of the rights originates from state land or land with management rights;

- 2) The original deed of Government Regulation which contains the granting of the right by the holder of the property right to the recipient of the right in question if it concerns the right to use the building and the right to use the land with the right of ownership;
- 3) In determining the boundaries of land parcels for systematic land registration and sporadic land registration, efforts are made to arrange boundaries based on the agreement of the interested parties;
- 4) Placement of boundary signs, including their maintenance, must be carried out by the holder of the land rights concerned;
- 5) The shape, size, and technique of placing boundary marks shall be determined by the Minister.

f. Issuance of Certificates

The certificate of land rights must be issued through existing and predetermined procedures that have a function as a means of proof if in the future problems arise, both in disputes and outside disputes, the issuance of the certificate of the applicant requires proof of right control and this evidence is known as a certificate based on the provisions of Article 32 of the Regulation Government number 24 of 1997, which reads as follows: 9 "Certificate is a letter of proof of rights that applies as a strong proof of physical and juridical data contained in it, as long as the physical and juridical data are in accordance with the data contained in the measuring document. and the land book of the right in question".

In the event that the land parcel has been legally issued in the name of the person or legal entity that obtained the land in good faith and actually controls it, then the other party who feels that he has rights to the land can no longer claim equality of rights if within (5) years since the issuance of the certificate, he has not submitted a written objection to the certificate holder and the head of the land office concerned, nor has he filed a lawsuit with the court regarding the control of the land or the issuance of the certificate.

IV. Conclusion

Based on the description of the discussion in the previous chapter, it can be concluded that the research results are as follows:

Based on the description above, it can be concluded that the land registration procedure to obtain an electronic certificate must refer to the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency no. 1 of 2021 concerning Electronic Certificates in accordance with the provisions of article 2 regarding the implementation of electronic land registration and also explained in article 6 for land that has not been registered and the replacement of certificates into electronic certificates for those that have been registered and clarified again in Government Regulation number 18 of 2021 concerning Management Rights , Land Rights, Flat Units and Land Registration, article 84 jo. Article 87 specifically regulates the implementation of land registration but for land that has not been registered and does not have a certificate, the registration process refers to Government Regulation number 24 of 1997 concerning Land Registration because only in the regulation it is regulated about land registration for the first time and systematic land registration until registration. sporadic soils are intended to be easier to record when they are registered electronically. Electronic certificates can be used as legal evidence in accordance with the provisions of the applicable procedural law in Indonesia because they are included in the type of documentary evidence that is recognized as valid by the applicable laws and regulations, namely

in Staatblaad 1941 Number 44 HIR and the Civil Code (BW) and written evidence or letters are regulated in 138, 165 and 167 HIR/164, 285 and 306 RBg/Stb 1867 Number 29 and article 1867 to article 894 BW which The binding force on an electronic certificate is an electronic signature which is described in Article 11 of Law number 11 of 2008 concerning Electronic Information and Transactions and has been amended by Law number 19 of 2016 which has recognized the validity and strength of electronic certificates as evidence. as proof of ownership of land rights.

1. The phrase “electronic certificate” refers to what is contained in the Information and Electronic Transaction Law and the Job Creation Law relating to the Decision of the Agency or State Administrative Officer in carrying out legal actions. Before the Job Creation Law came into effect, the public used electronic certificates as evidence of ownership of land rights, rights to flats and land management rights, after the Job Creation Law came into effect there was a shift from analog certificates to electronic certificates for registration. or the changes are carried out based on the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the Agency.

National Land. The application of Electronic Land Certificates in land registration services is an innovative step from BPN to increase the role of public services, so that this good goal can be accepted by all circles of society, socialization of electronic land certificates must always be increased to raise public awareness of the functions and benefits of electronic land certificates. as evidence of land ownership rights. So far, administrative defects often occur in the issuance of land certificates, the Land Office as the executor of land registration should always apply the principle of thoroughness, caution and scrutiny in collecting land registration data, so that the documents produced truly guarantee legal certainty of rights over the ground.

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