

Legal Knowledge Related to Land Registration and Electronic Certification of Land Ownership

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Abstract

The dynamics of land in Indonesia have led to various conflicts, one of which is proof of land rights in the form of land rights certificates. The existing conditions, until 2021, it turns out that many rights subjects do not have land rights certificates; they only rely on evidence in the form of old rights, including girik, pipil, kekitir. The proof of the ancient rights proved to be less able to guarantee legal certainty and legal protection than the certificate of land rights stated in the UUPA. In addition, there is Regulation Number 1 of 2021 concerning Electronic Certificates that must be applied. This situation will be a problem that will be discussed related to land registration which is done manually turning into electronic, which is later expected to make it easier for the community to obtain proof of ownership of their land rights. This activity is part of implementing the Tri Dharma of Higher Education, one of which is community service in the form of legal counseling. Through this activity, it is hoped that the community can play an active role in registering proof of land rights for certification and encourage the achievement of "no land ownership without certificates" that the Government can carry out.

Keywords: Evidence of land ownership; Electronic Certificate; Land Registration; Community Service.

I. Introduction

In addition to the need for clothing and food, housing is the primary need for everyone. The house is a shelter from heat, rain, and wind, a gathering place for all family members, and store family personal belongings. It is a cultural characteristic, as well as various other uses. Ownership of a plot of land should be supported by proof of ownership of land rights, namely the possession of a Land Rights Certificate. Suppose some residents have land rights but do not have evidence of rights in the form of a land rights certificate. In that case, the National Land Agency of the Republic of Indonesia will carry out asset legalization.

Asset legalization activities, commonly known as PRONA, is an acronym for the National Agrarian Operations Project. PRONA is a form of asset legalization activity that is a land administration process that includes adjudication activities, land registration up to the issuance of certificates/proof of land rights, and is carried out en masse. PRONA is held based on the Minister of Home Affairs Decree No. 189 of 1981 concerning the National Agrarian Operations Project. Based on these regulations, PRONA Operators are tasked with processing mass land certificates to manifest the Orderly Chess program in

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the Land Sector. PRONA is carried out in an integrated manner and is aimed at all levels of society, especially for the economically vulnerable groups, and to resolve land disputes of a strategic nature. PRONA aims to accelerate land registration throughout Indonesia by prioritizing poor/underdeveloped areas, fertile or developing agricultural areas, urban buffer areas, suburbs or impoverished areas, people's economic development zones. PRONA is a manifestation of the government's efforts to improve the living standards of the economically vulnerable middle class. The APBN entirely bears the cost of managing and implementing PRONA in the allocation of DIPA BPN RI.

The obstacle that often occurs in the community is the number of land disputes that arise due to the incorrect location and boundaries of land parcels. Therefore, the problem of measuring, mapping, and providing large-scale maps to carry out land registration should not be ignored and is an important part that needs serious and careful attention, not only in the context of collecting land tenure data but also in presenting data control/ownership of land and data storage.¹

The term PRONA is now known as the Complete Systematic Land Registration (PTSL) after issuing Regulation of the Minister of ATR/Head of BPN No. 6 of 2018 concerning Complete Systematic Land Registration. Under the PTSL program, the government targets that in the 2017-2025 period, the registration and certification of 126 million parcels of land in Indonesia must be completed.² However, the practice in implementing this systematic land registration activity is that not all communities are willing to participate in government program land registrations with various background problems, so they remain adamant that proof of land rights other than land rights certificates is still recognized. Its existence. Finally, it can be seen that there are still many lands in Indonesia that do not yet have a certificate as proof of their rights.

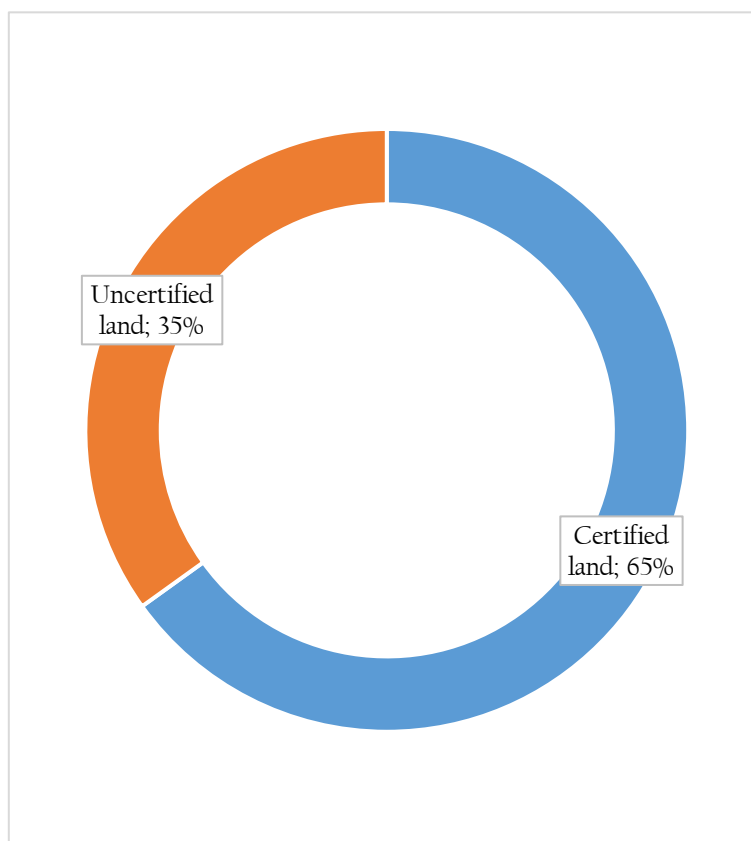
Every plot of land that exists throughout the territory of Indonesia should have been registered with the local Regency/Municipal Land Office so that land data can be available entirely and comprehensively, which in itself will be helpful for interested parties, both government agencies themselves and individuals or the private sector,

¹ Sri Hajati et al., *Politik Hukum Pertanahan Indonesia* (Jakarta: Kencana, 2020). 308

² Dian Aries Mujiburohman, "Potensi Permasalahan Pendaftaran Tanah Sistematis Lengkap," *Bhumi: Jurnal Agraria Dan Pertanahan* 4, no. 1 (2018): 88–101; I Ketut Sudantra, "Implikasi Keputusan Menteri ATR/Kepala BPN Nomor 276/KEP-19.2/X/2017 Terhadap Kedudukan Tanah Milik Desa Pakraman," *Jurnal Magister Hukum Udayana* 7, no. 4 (2018): 549.

especially for parties who will carry out legal actions or will make legal relations over a plot of land.³ Based on data from Kompas.com, it is stated that until the end of 2020, only 82 million parcels have been registered out of a total of approximately 126 million land parcels in Indonesia. Thus, there is still around 35% of the land that has not been registered.⁴

Gambar 1. Certified and Uncertified Land Rights Sector



Not yet finished with this systematic land registration problem, On January 12, 2021, the minister of ATR/Head of BPN issued the Minister of Agrarian and Spatial Planning Regulation No. 1 of 2021 concerning Electronic Certificates. This situation will be a problem that will discuss regarding land registration which is done manually turning into electronic, which is later expected to make it easier for the community to obtain proof of ownership of their land rights, to guarantee legal certainty and protection for the community following the mandate of the legislation.

³ Ilyas Ismail, "A Certificate of Land as an Evidence of Land in Judicial System," *Kanun Jurnal Ilmu Huku* 53 (2011): 23–34.

⁴ Ardiansyah Fadli, "Baru 82 Juta Bidang Tanah Tersertifikasi," *properti.kompas.com*, n.d., <https://properti.kompas.com/read/2020/12/10/164926321/baru-82-juta-bidang-tanah-tersertifikasi>.

II. Method

Community service is one form of the Tri Dharma of Higher Education that must be carried out by a lecturer involving the role of the community. This activity can be in the form of legal counseling, legal socialization, and legal assistance. This is a reciprocal effort to apply the knowledge and competencies mastered by lecturers to society, which aims to solve legal problems in society.⁵ The Community Service Team from the Jurisprudence Department of the Faculty of Law, Universitas Airlangga, uses a form of activity in legal counseling. As part of the process, legal counseling activities can be evaluated to what extent the program has been previously planned. Can the ideas that arise when legal counseling activities are carried out or experience obstacles? Evaluation is critical to find out the constraints and supporting factors to ensure that the socialization process occurs according to the predetermined schedule. The evaluation results become very valuable input both for improvement and for other extension programs. This evaluation will be used as material to find out progress, successes, and problems in the implementation of legal counseling so that the program can run according to the goals that have been set previously.⁶ Considering that this activity is also part of a series of legal science activities that are *sui generis*, the approach used in this community service uses a statutory system supported by a conceptual approach that will produce legal prescriptions that can be accepted by colleagues and can also be applied. and used by the public at large.

This activity was supposed to be held on July 8, 2021. Still, considering the situation of the Covid-19 pandemic that has not ended, coupled with the government policy on PPKM, which is extended almost every week, finally, this activity can be carried out on August 24, 2021, at the Kalirejo Village Office, Lawang District, Malang Regency offline, which also continues to pay attention to health protocols and also recommendations for implementing the 5M policy. Oemar Moechthar, S.H., M.Kn chaired this activity. Attended by speakers, including Prof. Dr. Sri Hajati, S.H., M.S., and Dr. Sri Winarsi, S.H., M.H., and assisted by a team of lecturers from the Basic Law Department. Participants

⁵ Yana Indawati and Sri Maharani, "Complete System Law Registration Laws (PTSL) as an Effectiveness and Private Protection Private Law Private Vocational School of Prasung Sidoarjo Village," *Veteran Society Journal* 1, no. 1 (2020): 11–19.

⁶ Erma Rusdiana, "Increasing the Ability and Legal Awareness of the Tanah Merah Dajah Village Community Regarding Domestic Violent Crimes," *Veteran Society Journal* 1, no. 1 (2020): 55–65.

in this activity came from residents around Kalirejo Village, Malang Regency, and was attended by 30 people.

III. Discussion and Result

The results of community service activities that the community service team has carried out, Jurisprudence Department, Faculty of Law, Universitas Airlangga in Kalirejo Village, Lawang District, Malang Regency, can be explained through the following subsections.

A. Certificate of Land Rights as a Form of Protection and Legal Certainty for Rights Holders

The land is actually, in the perspective of the constitution is one type of strategic natural resource. The presence and activities of the state, economic activities, and the existence of the population is directly related to the fact and regulation of land. Land is also a natural resource for life and an integral part of the existence of the state. Land is not only the leading production factor in economic activities and production systems. Almost every economic activity and all life require land as a supporting factor. Therefore, the land is at the same time necessary to live and to carry out various economic activities. Land cannot be equated with individual commodities or benefits other goods, which are required as factors of production. The land is part of life and the basic needs of many people.⁷

Quoting the opinion of Soerojo Wigjodipuro⁸, Soil has a significant value because there are two factors, namely nature and fact. Based on its nature factor, because the land is fixed, it does not change, so that land has a good investment value for most people; this is due to the tendency of the price or selling value of land to continue to increase. Meanwhile, based on the factual factors, namely that the land is the residence of the alliance or customary law community, the land is the place of life and livelihood, the land is also the burial place for the members of the community members, land is also a place of protection. Because of the nature and facts of such a vital land, the land is an asset that

⁷ Didik J Rachbini and Andi Mattalata, "Pertanahan Dalam Perspektif Teori Dan Konstitusi," *Jurnal Ketatanegaraan: Pertanahan* 009, no. 1 (2018): 7-11.

⁸ Soerojo Wigjodipuro, dalam Rofi Wahanisa, Suhadi, and Nurul Fibrianti, "Sosialisasi Pentingnya Kepemilikan Sertifikat Tanah Sebagai Bukti Penguasaan Hak Milik Atas Tanah Berdasar PP No. 24 Tahun 1997 Tentang Pendaftaran Tanah Di Desa Jetis Kecamatan Badungan Kabupaten Semarang," *Jurnal Abdimas* 14, no. 2 (2010): 1-2.

is most sought after and needed, because the land that will be built as a house to live is one of the primary needs, namely the need for "boards" or the need for housing.

The provisions of Article 33 paragraph (3) of the Indonesian Constitution states that the state controls the earth, water, and natural resources contained therein for the greatest prosperity of the people. 5 of 1960 concerning Basic Agrarian Basic Regulations or later in the fifth section states that this law can be called the Basic Agrarian Law or UUPA. The provisions of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia contain agricultural resources. Agrarian here can be interpreted broadly, including earth, water, space, and the natural resources contained therein. In a narrow sense, the word 'earth' is defined as land with two dimensions, length times width, or which is referred to as land rights in land law. Thus, agricultural law in a narrow sense includes land law issues or what is also known as land law.

The provisions of Article 19 of the UUPA mandate the holding of land registration to guarantee legal certainty, as referred to above. In the provisions of Article 19 of the UUPA it is stated that *"to guarantee legal certainty the government shall conduct land registration throughout the territory of Indonesia according to the provisions regulated by government regulations."* Based on the above provisions, land registration is further regulated by Government Regulation no. 10 of 1961 concerning Land Registration. With this government regulation for 36 years, it has not been enough to provide satisfactory results. Land registration in Indonesia can only register less than 30% of land parcels that meet the requirements for registration. Of the approximately 55 million land parcels that meet the requirements for registration, only approximately 16.3 million parcels have been registered. Therefore, in 1997 changes were made to the land registration arrangements stipulated in Government Regulation no. 24 of 1997 concerning Land Registration. With the enactment of Government Regulation no. 24 of 1997, the provisions in Government Regulation no. 10 of 1961 were declared revoked and had no legal force.

The final product of the land registration process is a certificate of land rights which is proof of ownership of land rights where; this certificate is an excerpt from the land book kept by the Regency/City Land Office where the object of the land rights is located. Issuance of certificates of land rights provides guarantees of certainty that include three things, namely certainty of the object of the right in the form of boundaries and land area, then the certainty of the subject of the rights, whether individuals or legal entities, and

finally certainty of the status of land rights, whether it is a right of ownership, right of cultivation, right of the building, right of use, right of ownership of an apartment unit, or right of a mortgage over land. Regarding the object of this land registration, it can be seen in the provisions of Article 9 of Government Regulation no. 24 the Year 1997.

To provide more legal certainty to the holders of land rights in Government Regulation no. 24 of 1997 was given an affirmation regarding the extent of the strength of the proof of the certificate, which was declared as a vital evidentiary tool by the UUPA. For this reason, there is a provision that as long as the opposite has not been proven, physical data and juridical data included in the certificate must be accepted as correct data, both in daily legal actions and in disputes in court, as long as the data is following what is stated in the letter of measurement. And the land book in question (*vide* Article 32 paragraph (1) Government Regulation No. 24 of 1997), and that people cannot claim land that has been certified on behalf of another person or legal entity, if within 5 (five) years since the issuance of the certificate he did not file a lawsuit in court, while the land was obtained by the person or other legal entity in good faith and physically controlled by him or by another person or legal entity that received his approval (*vide* Article 32 paragraph (2) Government Regulation No. 24 of 1997).

B. Problems and Alternative Solutions in Land Registration Activities in Indonesia

The things that are obstacles in the implementation of land registration, in addition to the lack of budget, tools, and personnel, are the objective conditions of the lands themselves which, apart from being large in number and spread over a wide area, most of their control is not supported by accessible evidence. Obtained and can be trusted. In addition, the legal provisions for the basis for its implementation are felt to be insufficient to provide the possibility for registration to be carried out in a short time with more satisfactory results. In connection with this, to improve better support for national development by providing legal certainty in the land sector, it is deemed necessary to make improvements to the provisions governing land registration, which are scattered in many laws and regulations. So that Government Regulation no. 10 of 1961 is considered less able to support the creation of more tangible results in national development, especially the land registration program. Therefore, on July 8, 1997, the government issued Government Regulation no. 24 of 1997 concerning Land Registration instead of Government Regulation no. 10 of 1961. With this new Government Regulation, it is

hoped that it will support effective and efficient land registration programs. In the Government Regulation that perfects the Government Regulation no. 10 of 1961, the objectives and the system used, which in essence have been stipulated in the UUPA, are that land registration is carried out to guarantee legal certainty in the land sector and that the publication system is negative, but contains positive elements because will produce letters of proof of rights that apply as strong evidence, as stated in article 19 paragraph (2) letter c, article 23 paragraph (2), article 32 paragraph (2) and Article 38 paragraph (2) of the UUPA. Land registration also continues to be carried out in two ways, namely firstly systematically covering the area of one village or sub-district or part of it, which is mainly carried out on the initiative of the government and sporadically, namely registration of land parcels at the request of the holder or recipient of the rights concerned regularly individual or bulk.

Rully Chairul Azwar⁹ states that the provisions of Article 33 paragraph (3) of the Indonesian Constitution contain the meaning that land is “a public good” that must be controlled directly by the state because land must be used for the greatest prosperity of the people. Also, the land has a social function. However, the current reality is: (a) the owners of capital control the land; (b) land becomes an “economic good” which is mainly used by private business forces as a means of pursuing profit; (c) the state is unable to exercise control over monopolistic control over land, and; (d) land and all the natural resources inherent in it have not been able to be realized for the greatest prosperity of the people. Rully Chairul Azwar added that the current agricultural situation in the land has not entirely escaped the character of feudalism, colonialism, and capitalism.

Land registration that produces proof of land rights, called certificates, is the realization of one of the objectives of the UUPA. The obligation to carry out the registration is, in principle, borne by the government, and its implementation is carried out in stages, region by region, based on the consideration of the availability of the registration base map.¹⁰ The certificate of land rights is the dream of every land-right holder. It can be felt that there is still something lacking and not stable if the ownership of land rights has not been accompanied by proof of ownership in the form of a certificate of land rights. It is

⁹ Rully Chairul Azwar, “Sambutan Pimpinan Lembaga Pengkajian Majelis Permusyawaratan Rakyat Republik Indonesia,” *Jurnal Ketatanegaraan: Pertanahan, Lembaga Pengkajian Majelis Permusyawaratan Rakyat Republik Indonesia* (Jakarta, 2018).

¹⁰ Maria S.W. Sumardjono, “Kebijakan Pertanahan Antara Regulasi Dan Implementasi,” *Kompas*, 2001.

accurate, and it is proper that everyone strives to obtain a certificate because the provisions of the UUPA guarantee this, namely the right of every holder of land rights to obtain a certificate.¹¹

In Haryati's research¹² it is stated that for urban communities, it can be recognized that there is awareness to certify their land rights. However, for rural communities, many may still be reluctant to certify their land rights due to a lack of knowledge about the importance of land rights certificates and concerns about the high costs incurred. Therefore, an effort to overcome this is by providing legal counseling in the land sector, which the relevant agencies provide by involving local universities. To guarantee legal certainty and certainty of rights, the land must be registered to obtain strong evidence in the form of a certificate of land rights. Therefore, it is necessary to provide legal counseling to the community regularly actively and government programs in the context of mass land rights certification (systematic land registration) need to be increased so that as many people as possible get services from the government to certify their land rights.

In carrying out the purpose of land registration, there are principles or principles used to support the process of land registration. Soedikno Mertokusumo¹³ states that there are two kinds of inland registration principles: *first*, the principle of specialty (*specialiteit*). It means that the implementation of land registration is carried out based on specific laws and regulations, which are technically related to measurement, mapping, and registration of the transition. Thus, the implementation of land registration can provide precise physical data regarding the land area, land location, and land boundaries. *Second*, the principle of *openbaarheid* or also known as the principle of publicity. This principle presents juridical data on who is the subject of the right, the name of the land right, and how the transfer occurs and its imposition. This juridical data is open to the public, meaning that everyone can see it. Based on this principle, everyone has the right to know juridical data on the subject of rights, names of land rights, transfer of rights, as well as

¹¹ M Sukarmi, "Implementasi Pendaftaran Sertipikat Hak Milik Atas Tanah Dalam Pembagian Waris Dan Permasalahannya Di Kantor Pertanahan Kota Semarang," *Jurnal Akta* 4, no. 2 (2017): 133-40, <http://jurnal.unissula.ac.id/index.php/akta/article/view/1774/1316>.

¹² Haryati, "Fungsi Sertifikat Hak Atas Tanah Dalam Menjamin Kepastian Hukum," *Jurnal Hukum Dan Dinamika Masyarakat* 5, no. 1 (2007): 65-75.

¹³ Sudikno Mertokusumo, *Hukum Dan Politik Agraria*, 2008.

the imposition of land rights at the Regency/City Land Office, including submitting objections before the certificate is issued, replacement certificates, lost or damaged certificate.

This systematic land registration was formerly known as the National Agrarian Program or better understood by ordinary people as Prona. Prona National Policy is a national policy in the land sector that aims to provide legal certainty for land rights holders to improve and support the implementation of *land reform* (Agrarian Reform) and resolve disputes entirely at a low cost. Prona is also intended to resolve strategic land disputes which aim to make landowners peaceful from third-party demands.¹⁴ Prona was carried out because there were still many lands that had not been certified, which was constrained by costs that tended to be expensive. Thus, the government issued this policy to provide opportunities for people who have not registered their lands located throughout the sovereign territory of the Republic of Indonesia at a low cost and a fast process. This policy can provide legal certainty to the owners of land rights and avoid overlapping ownership of land rights.¹⁵ At the time this work was written, the Prona conducted by the Land Office was guided by the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 4 of 2015 concerning the National Agrarian Program, which is also a new guideline for conducting the National Agrarian Program and which aims to improve services in the land sector for the benefit of people with weak economic groups who provide mass certificates and empower organizations and human resources to assist the community in land area. In this Prona policy, there is also a set location determination. The scale becomes a priority in determining the location of Prona, namely the necessary condition of the available area, which is directed at the following areas: (a) poor/underdeveloped villages; (b) fertile or developing agricultural areas; (c) urban buffer zones, suburbs or poor urban areas; (d) people's economic development areas in areas where natural disasters are located; (e) densely populated residential areas and have a significant enough potential to be developed; (f) areas outside the vicinity of transmigration; (g) the buffer zone of the

¹⁴ Lihat dalam Samun Ismaya, *Hukum Administrasi Pertanahan* (Yogyakarta: Graha Ilmu, 2013).

¹⁵ Kartika Widyarningsih, Budi Santoso, and Mujiono Hafidh, "Pelaksanaan Pendaftaran Tanah Untuk Pertama Kaliterhadap Tanah Yang Belum Bersertipikat Melalui Program Nasional Agraria (Prona) Di Kantor Pertanahan Jakarta Bara," *Jurnal Notarius* 12, no. 2 (2019): 824–41.

National Park area; (h) new residential areas affected by the development of public infrastructure or relocation due to natural disasters.

Then, this systematic land registration was re-implemented with the Complete Systematic Land Registration Program (PTSL), which stated in the Regulation of the Minister of ATR/Head of BPN No. 6 of 2018 concerning Complete Systematic Land Registration which was also followed up with Presidential Instruction No. 2 of 2018 concerning Acceleration of Complete Systematic Land Registration in All Territories of the Republic of Indonesia. This provision has been running since 2017. In the period 2017 to 2019, PTSL registered approximately 28 million parcels of land throughout Indonesia. Starting with a target of 5 million plots of land in 2017, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency has successfully implemented President Joko Widodo's order to accelerate the registration of community-owned lands.¹⁶

In general, the community can register their land objects independently or participate in government programs such as PTSL. To make it easier to understand the difference between the two, the following will present a comparison of systematic and sporadic land registration for the first time, which can be explained in the following table:

Tabel 1. Differences between Systematic and Sporadic Land Registration

Differentiating Benchmark	Systematic Land Registration	Sporadic Land Registration
Initiative	Simultaneously	Individual or mass
Implementation	Executed at the request of the government	Executed at the request of interested parties
Data acquisition period	Get data faster on land parcels to be registered	It takes longer to get data about the fields to be registered

¹⁶ Kementerian Agraria dan Tata Ruang/Badan Pertanahan Nasional, "Kementerian ATR/BPN Kejar Realisasi PTSL Tahun 2020," atrbpn.go.id, 2020, <https://www.atrbpn.go.id/?menu=baca&kd=Wwvd4EyrrQoM5HHyT7ztD/baWtcwSfg80Gz6e00mbBP3iRnJIKe04VKucKyKuGTA>.

Preparation and implementation period	It takes more time to prepare and implement	It does not require a long time in preparation and implementation
Number of objects registered	All land registration objects are registered	Only one or several objects of land registration are registered
Sources of financing	Funded by the government	Personal expenses

Source: Bappenas, 2016, "Kajian Persiapan Perubahan Sistem Pendaftaran Tanah Publikasi Positif di Indonesia".

The issuance of certificates is given to those who are entitled, with the aim that the right holders can easily prove their land ownership. Article 5 Government Regulation no. 24 of 1997 explicitly states that the government agency that carries out land registration throughout the territory of the Republic of Indonesia is the National Land Agency. Furthermore, in Article 6 paragraph (1), it is emphasized that in implementing the land registration, the task of implementing land registration is carried out by the Head of the Regency/Municipal Land Office. Although land registration has been carried out in its implementation, there are still frequent disputes over land rights during the community, which often even lead to lawsuits to the court, which results in blocking or even cancellation of the land rights certificate by the Office of the Republic of Indonesia. It can result in the parties acquiring the land, who, even though they have followed the appropriate procedures, will be significantly disadvantaged.

Maria S.W. Sumardjono¹⁷ stated that the benefits obtained by issuing a certificate are that it can reduce the possibility of disputes with other parties, strengthen the bargaining position if other parties need land rights for development activities, and shorten the transfer process and impose land rights. For someone who holds land rights, having a certificate has more value. Because compared to other written evidence, a certificate can also be a strong proof of rights, which means that it must be considered

¹⁷ Maria S.W. Sumardjono, dalam Sahono, "Penerbitan Sertipikat Hak Atas Tanah Dan Implikasi Hukumnya."

valid until proven otherwise in court. In line with the above opinion, Tuti Rezeki¹⁸ stated that the functions of land rights certificates are: *first*, it can prevent (protect) the occurrence of land disputes, the certificate owner will feel calm and peaceful because the holder is protected from arbitrary actions carried out by anyone; *second*, with the ownership of a certificate of land rights, the landowner can take any legal action as long as it does not conflict with the law, public order and morality; *third*, land rights certificates are intended to prevent excessive land ownership as determined by laws and regulations; *fourth*, as strong evidence to provide legal certainty over the ownership of a piece of land for the party whose name is listed in the certificate following the provisions of Article 19 paragraph 2 letter c of the UUPA.

In addition to the benefits as mentioned above, this land registration provides benefits to the community, namely: *first*, the community's economy is more advanced, which with proof of land rights in the form of land rights certificates, can be used as debt guarantees with the burden of a rights guarantee institution—dependents as stated in Law 4 of 1996. People who need business capital can obtain a certificate of land rights as collateral in the bank. Thus, more business actors in the community can impact the potential for better economic growth positively. *Second*, increase the selling value of land and buildings. Land rights that have been registered so that a certificate of land rights is issued will generally have a much higher selling value than those without a certificate. It is understandable considering that the buyer is sure of the truth about the data on the object of the land to be carried out the transaction and has legal certainty over the status of the land. *Third*, people who need information will find it easier to obtain data on an object in land rights, especially in the era of the Industrial Revolution 4.0, which is increasingly using sophisticated equipment to support the functions and duties of the land office. Parties who need data can quickly go to the land office to submit data related to the plot of land. It implements the open principle in the land registration system contained in Government Regulation no. 24 of 1997. *Fourth*, make it easier for transactions to transfer land rights by simply facing the PPAT for a deed of transfer (e.g., sale and purchase, exchange, *inbreng*, grants), and after the PPAT deed is done, it is enough

¹⁸ Tuti Rezeki, "Tinjauan Umum Tentang Sertipikat Hak Milik Atas Tanah," *Jurnal Varia Hukum* 39, no. September (2018): 1534–47.

to show the certificate to the Regency Land Office/The city where the plot of land is located. The land office will not have any difficulty transferring the rights, considering that the certificate of land rights is an excerpt from the land book listed in the Regency/City Land Office. *Fifth*, land registration, including the land registration system contained in the provisions of Government Regulation no. 24 of 1997, will create a sense of security for land rights holders because they will avoid the feeling of fear of being sued. Benefits for the government also accompany this, namely land as the main potential object of lawsuits in court can decrease. A high level of land conflicts in the courts can arise because it is unclear who the actual landowners are.

C. Presence of Electronic Certificates Instead of Ordinary Certificates

As mentioned earlier, that the certificate of land rights as the final result of the registration process of land rights (including changes regarding the subject matter, status of rights, and legal actions carried out on the land) is a vital evidence tool as stipulated in Article 19 paragraph (1) letter c, Article 23 paragraph (2), Article 32 paragraph (2) and Article 38 paragraph (2) BAL. The certificate is strong evidence and is not absolute/perfect proof according to the UUPA and the Government Regulation that implements it. It means that the information contained in it has legal force and must be accepted (by the judge) as accurate information as long as and as long as there is no evidence to prove otherwise.¹⁹ In the provisions of Article 32 paragraph (1) Government Regulation no. 24 of 1997, it is stated that a certificate is a proof of right that applies as strong evidence, but in paragraph (2) of the article, it states that if on a plot of land a certificate has been issued legally in the name of the person or legal entity that obtained the land within good faith and controls it, the other party who feels he has the right to the land can no longer claim the implementation of the right if within five years from the issuance of the certificate he does not file a written objection to the certificate holder and the Head of the Land Office concerned or does not submit a written objection. A lawsuit to the court regarding land tenure or certificate issuance.

In terms of issuing certificates, Article 31 of Government Regulation no. 24 of 1997 that the certificate is issued for the benefit of the right holder concerned following the physical data and juridical data that have been registered in the land book. If there are

¹⁹ Arie Sukanti Hutagalung, *Program Redistribusi Tanah Di Indonesia* (Jakarta: Rajawali, 198AD).

records concerning juridical data in the land book or records concerning physical data or juridical data, the issuance of the certificate is suspended until the relevant records are deleted. The certificate may only be submitted to the party whose name is listed in the land book concerned as the right holder or to another party authorized by him. Regarding land rights or ownership rights to an apartment unit jointly owned by several people or legal entities, a certificate is issued, which is received to one of the joint rights holders upon the other joint rights holders' written appointment.

On January 12, 2021, the minister of ATR/Head of BPN issued the Minister of Agrarian and Spatial Planning Regulation No. 1 of 2021 concerning Electronic Certificates. It adds to the problem and, at the same time, new challenges in legal evidence, especially evident in the form of land rights. Because initially there were still many unfinished lands for manual or regular certificates, now there is another provision regarding electronic land rights certificates. This provision is a mandate from Law no. 11 of 2020 concerning Job Creation, which previously generated a lot of polemics in the community. It has become very common in the land office, considering that previously in 2019, the first digitization effort was carried out in the land sector, namely electronic mortgages or better known as *HT-el*. The *ratio legis* of this provision may be considering the advancement of technology in the world and providing space for the community, which in the guarantee law, a fiduciary guarantee certificate has already appeared and was launched by the Ministry of Law and Human Rights.

The increasingly integrated globalization of communication technology makes the world seem borderless, especially with the increasing use of the internet (interconnection networking), especially in Indonesia. The transformation of business processes, done initially manually, has now been carried out electronically and online due to the rapid development of information and communication technology. Electronic business and transactions (e-Business, e-Government, e-Commerce, e-procurement) is an up-and-coming trend, not least related to e-certificates or electronic certificates developed by the government of the Republic of Indonesia. The ease of electronic transactions causes this opportunity because they can be done anytime, anywhere, and by anyone in real-time.²⁰ Referring to the above provisions, an Electronic Certificate (E-Certificate) is a certificate

²⁰ Ahmad Budi Setiawan, "Ecosystem of Electronic Certificate Implementation in Electronic Commerce System," *Jurnal Penelitian Dan Pengembangan Komunikasi Dan Informatika* 6, no. 2 (2015): 15–28.

issued through an electronic system in the form of an electronic document. An electronic system is a series of electronic devices and procedures that function to prepare, collect, process, analyze, store, display, announce, transmit, and/or disseminate electronic information. Meanwhile, an electronic document is any electronic information created, forwarded, sent, received, or stored in analog, digital, electromagnetic, optical, or similar forms, which can be seen, displayed and/or heard through a computer or electronic system, including but not limited to on writing, sound, pictures, maps, designs, photographs or the like, letters, signs, numbers, access codes, symbols or perforations that have meaning or meaning or can be understood by people who can understand them.

Furthermore, in the provisions of Article 2 of the Regulation of the Minister of ATR it is stated that the implementation of land registration can be done electronically through an electronic system which includes the following activities: (a) land registration for the first time; and (b) maintenance of land registration data. The output of this electronic land registration activity is in the form of data, electronic information, and electronic documents, which are correct holder data, physical data, and legal data on land parcels that are valid and maintained. All the final results of the land registration are stored in the electronic system database.²¹ The results of the implementation of the electronic system in the form of electronic documents issued through the electronic system are legalized using electronic signatures following the provisions of laws and regulations. An electronic signature is a signature that consists of electronic information that is attached, associated, or related to other electronic information that is used as a means of verification and authentication. As evidence in the provisions of Article 1866 *Burgerlijk Wetboek*, which has evidentiary power (i.e., written or letter evidence; witness evidence;

²¹ The provisions of Article 1 point 4 of the Regulation of the Minister of ATR No. 1 of 2021 states that a database is a collection of data that is systematically and integrated and stored in a large memory and can be accessed by one or more users from different terminals. Citing Chowdurry's opinion published in the Kusmayadi journal, that the database in a broad sense is a document record management system that contains bibliographic information, abstracts, and complete articles, either manually or automatically using a computer. The database functions to collect data and maintain information. Another definition of a database is an organized collection of data that is stored and related to each other to be accessed easily by more than one user (user-friendly). The database is designed to avoid data duplication, making it easier for users to find the information they need. The main characteristics of databases include: (1) integrating with different applications, (2) eliminating or reducing data duplication, (3) increasing data independence, (4) allowing for shared access, and (5) providing centralized control facilities in the database. monitoring access and security of information utilization (G.G. Chowdurry, *Introduction to Modern Information Retrieval* (London: Library Association Publishing, 1999); dalam Eka Kusmayadi, "Akses Dan Pemanfaatan Pangkalan Data Jurnal Ilmiah," *Jurnal Perpustakaan Pertanian* 17, no. 1 (2008): 3.

suspicion; confession; oath), other evidence outside the provisions must also have evidentiary power so that it is legally used as evidence at trial. The electronic signature based on the Electronic Information and Transaction Law is a signature consisting of electronic information that is attached, associated, or related to other electronic information used as a means of verification and authentication. In general, an electronic signature or digital signature can be interpreted as security on digital data created with a private signature key, where its use depends on the public key that is the partner.²² Regarding the strength of proof possessed by an electronic signature, in the provisions of Article 18 jis. Article 7, Article 11 of Law no. 11 of 2008 concerning Information and Technology stipulates that the power of proof of an electronic document affixed with an electronic signature is the same as the power of proof of a notarial deed; however, this provision is contrary to what is stipulated in Article 1 paragraph (7) of the Law on Notary Positions.²³

The higher the use of information technology in this era of communication globalization, the more the risks faced, especially in terms of quality and security. Various threats to data or information exchanged via the internet require a security solution. One of which is by using electronic certificates issued and managed by a trusted third party or CA (Certification Authority). CA or also known as electronic certificate guarantees 4 (four) aspects of electronic transactions, namely: *first*, confidentiality, which concerns the confidentiality of data or information, and protection of that information from

²² Dini Sukma Listyana, Ismi Ambar Wati, and Lisnawati, "Kekuatan Pembuktian Tanda Tangan Elektronik Sebagai Alat Bukti Yang Sah Dalam Perspektif Hukum Acara Di Indonesia Dan Belanda," *Jurnal Verstek* 2, no. 2 (2014): 146–54.

²³ The development of the times has become a variable that demands that the panel of judges who examine a dispute must not only master the *ius constitutum*, but also with the nature of judges who are not only mouthpieces of the law (*la bouche de la loi*), but must also be able to interpret the potential for expansion. from *ius constitutum* in the form of *ius constituendum*. Although according to Utrecht, the main point of difference between *ius constitutum* and *ius constituendum* is placed on the factors of space and time, namely the present and the future. In a trial of a State Administration dispute, one of the parties submitted a DVD as evidence, of course; at first the panel of judges had frowned upon seeing the existence of a DVD in the list of evidence, because based on the provisions of Article 100 of Law no. 5 of 1986, the evidence known in the procedural law of state administrative courts are: letters or writings; expert testimony; witness testimony; acknowledgment of the parties; and knowledge of judges. Although in the procedural law of the state administrative court, the principle of *dominus litis* is adopted based on the provisions of Article 107 of Law no. 5 of 1986, which states that "the judge determines what must be proven, the burden of proof and the assessment of the evidence, and for the validity of the proof, at least two pieces of evidence are needed based on the judge's conviction. However, the principle of free evidence is limited by the provisions of Article 100 above (Febby Fajrurrahman, "Alat Bukti Elektronik Dalam Hukum Acara Peradilan Tata Usaha Negara," *Varia Peradilan* 344, no. Juli (2014): 111–12.)

unauthorized parties; *second*, authenticity, which concerns the ability of a person, organization, or computer to prove the identity of the actual owner of the information; *third*, integrity, which concerns data protection against modification efforts by irresponsible parties, both as long as the data is stored or as long as the data is sent to other parties; *Lastly*, non-repudiation which involves the protection of a party involved in a transaction or communication activity which later denies that the transaction or activity has taken place.²⁴

Inconvenience in electronic transactions has led to issues regarding trust in electronic transactions both nationally, regionally, and globally. The success of an electronic business transaction can be judged from three criteria, namely, in terms of access, benefits, and community. An electronic transaction can be categorized as good if it can be accessed quickly, safely, the application is easy to use, and the coverage is comprehensive. In addition, electronic transactions can provide benefits such as increasing efficiency, flexibility, expanding the market, and responding to customers in real-time. From the community side, electronic transactions are categorized as good if they can make people connect, change culture and mindset, successfully change the environment of the market ecosystem. The three keys to the success of an electronic business transaction are carried out in a business mechanism (enterprise) and based on applicable rules and policies. Electronic transactions must be safe and reliable because every electronic transaction operation must have a reliability certificate and an electronic certificate.²⁵

About this electronic certificate concerning proof, Yuyut Prayuti *et.al.*²⁶ stated that this government policy still required an in-depth study and was waiting for the development of the evidence regulated in Law no. 11 of 2008, which adds new evidence other than what is regulated by law, is required to establish procedural law as a technique for using electronic data as evidence. It is because electronic data is not easy to operate for verification purposes. The Supreme Court is obliged to issue a fatwa against digital

²⁴ Setiawan, "Ecosystem of Electronic Certificate Implementation in Electronic Commerce System."

²⁵ Setiawan.

²⁶ Yuyut Prayuti and Happy Yulia Anggraeni, "Kedudukan Sertifikat Hak Tanggungan Elektronik Sebagai Alat Bukti Dalam Pelaksanaan Eksekusi Langsung Berdasarkan UU No. 4 Tahun 1996 Tentang Hak Tanggungan Atas Tanah Dan Benda Benda Yang Berkaitan Dengan Tanah," *Amalia, Nurul* 2, no. 1 (2018): 21-26.

public services, as well as the National Crypto Agency as a National Database, which must carry out an inventory of public services that use electronic data as legal products and as administrative products; otherwise, there will be many victims of invalid data that will arise in later. For example, the procedural law, both criminal and civil, does not recognize electronic data (one of which is the electronic mortgage certificate contained in the Agrarian Regulation 5 of 2020) as evidence of a criminal act because it has not been regulated (amended) to the provisions of Article 184 of the Criminal Procedure Code, which restricts criminal evidence is limited to definitive evidence in the form of witness statements, expert statements, letters, instructions and statements of the defendant, all of which are made manually.

Arkisman dan Nandatama Ayu Lafitri²⁷ conveyed the opposite. They stated that the position of electronic evidence as evidence is based on the provisions of Article 5 paragraph (1) of Law no. 11 of 2008, which states that all electronic information and electronic documents and their printouts are legal evidence so that the position of electronic evidence can be used in practice cases at trial as evidence. There is an expansion of evidence outside the Criminal Procedure Code, but it remains a valid evidence tool if it meets the requirements regulated by law. In the case of the case being studied, the result of an electronic mortgage certificate is a printed, electronic document. Proof of an electronic mortgage certificate in court in the form of an electronic document has the same legal force and legal consequences as a written document (letter) because the electronic document also includes a digital signature (electronic signature). This electronic signature also has the same legal force as a wet signature. The current regulations regarding electronic evidence have provided legal protection for the parties involved in it. The parties get legal protection from Law no. 11 of 2008 jo. Law No. 19 of 2016, so that a mortgage certificate in the form of a printed out of an electronic document can be submitted as evidence in court.

The same provisions can be made for electronic land rights certificates in connection with the two conflicting opinions. The government needs to conduct a review, especially by applying the precautionary principle regarding form, substance, and what will be

²⁷ Arkisman and Nandatama Ayu Lafitri, "Kepastian Hukum Sertipikat Hak Tanggungan Elektronik Dalam Hukum Pembuktian Di Peradilan Menurut Hukum Acara Perdata," *Jurnal Pro Hukum* 9, no. 2 (2020): 1-19.

included in the electronic land rights certificate. Later, it can provide legal protection and certainty to land rights holders, not backfire for land rights holders. It is vital to do this considering that at the time this article was written, the electronic certificate of land rights had never been published and was only a guide for the land office to issue an electronic certificate of land rights following the format determined by the Minister of Agrarian Affairs and Spatial Planning of the Republic of Indonesia.

IV. Conclusion

Landowners obtain many benefits if they want to register their land parcels so that the legal subject has a certificate as evidence of land rights. The many benefits obtained are the guarantee of legal certainty and legal protection for the owner. Land registration itself can be done independently (sporadic) or following government programs (systematic). Land registration itself can be done independently (sporadic) or following government programs (systematic). The existence of a certificate of land rights can also minimize disputes in the community. However, regarding the electronic land registration policy, the Government needs to conduct a review, especially by applying the precautionary principle in terms of form, substance, and also what will be included in the electronic land rights certificate, so that later it can provide legal protection and certainty to holders of land rights. Land rights, not even a boomerang for land rights holders. In addition, efforts are needed to attract public interest so that they can register their land parcels through legal counseling in the regions so that the community can better know the benefits derived from this land registration process which can be carried out by the relevant agencies or by involving the participation of lecturers in the field.

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