



Electronic certificates as authentic deeds Provisions governing as well as public doubts

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ABSTRACT

Advances in digital technology are developing rapidly, resulting in new legal products, such as the Regulation of the Minister of Agrarian Affairs/Head of BPN Number 1 of 2021 concerning Electronic Certificates which took effect in early 2021. This regulation refers to Article 147 of Law No. 11 of 2020 on Job Creation. The polemic occurred because Article 5 Paragraph 4 of Law No. 11 of 2008 on ITE jo Law No. 19 of 2016 prohibits notary and PPAT deeds in electronic form. However, Law No. 1 of 2024 on the Second Amendment to the ITE Law amended the norm, leaving it to the governing law, so that based on Article 147 of the Job Creation Law and Article 5 Paragraph 4 of the ITE Law No. 1 of 2024, an electronic certificate can be considered an authentic deed in accordance with Article 1868 BW. However, comprehensively, this Ministerial Regulation is not yet fully compliant with BW such as Article 1866 BW which does not recognise electronic authentic deeds, Article 1886 BW on the submission of electronic deeds in court, and Article 137 HIR on the denial of deeds in court. Courts need hardware and software to display electronic deeds. Article 1888 BW states that evidentiary power rests with the original deed, while electronic certificates are stored on a server, unlike analogue certificates. The public expects data security to be guaranteed by robust IT security and programmes so that it is not easily attacked by hackers.

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1. Introduction

Law is space and time, looking at law is often used with two paradigms, namely the law changes its society or the law is changed by its society (Basoeky, 2019). Law changes society, law creates social change as expressed by Rose Copon, law as a tool of social engineering, law is oriented towards the future, law not only creates order but also creates and encourages change and development of society. The law is changed by its society, the law serves the needs of society, the law is lagging behind in social changes such as in the field of information technology (Friedman & Ladinsky, 2021).

Advances in the field of electronic informatics offer convenience to public services. This condition has directly influenced the birth of new forms of legal acts (Sharma et al., 2021). The interaction of social change on the other hand is an inseparable unity with the law, like two sides of a coin, therefore questioning the law is questioning society and questioning society is also questioning the law (Milakovich, 2021). The development of society in the digital era was responded to by the Minister of Agrarian Affairs / Head of BPN by issuing Ministerial Regulation No. 1 of 2021 on electronic certificates (sertipikat-el). The preamble of this Ministerial regulation states that in order to realise electronic-based land services the results of land registration activities are issued in the form of electronic documents, and that based on considerations it is necessary to stipulate a Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency on Electronic Certificates (sertipikat-el). The parent of this Minister Agarari regulation is the Ciptakers Law, and Article 22 of this regulation states that this provision applies from the time of promulgation, namely 12 January 2021. Currently, some areas have already implemented the regulation, such as North Jakarta and Central Jakarta. Law is space and time, looking at law is often used with two paradigms, namely the law changes its society or the law is changed by its society (Roblek et al., 2020). Law changes society, law creates social change as Rose Copon said, law as a tool of social engineering, law is orientated towards the future, law not only creates order but also creates and encourages change and development of society. The law is changed by its society, the law serves the needs of society, the law is lagging behind in social changes such as in the field of information technology (Newman et al., 2022).

The development of information technology has brought significant changes in various aspects of human life, including in the fields of law and administration (Lloyd, 2020). One of the innovations resulting from this technological advancement is the use of electronic certificates as a form of document authentication. Electronic certificates are considered as a solution to overcome various problems that often occur in physical documents, such as forgery, loss, and damage. With electronic certificates, the process of verification and validation of documents can be done more quickly, safely, and efficiently (Rosenbloom et al., 2022).

Although regulations have been issued, the application of electronic certificates as authentic deeds still faces various challenges and doubts from the public (Haikal & Mahmudah, 2024). These doubts arise due to different perceptions regarding the validity and security of electronic certificates compared to conventional authentic deeds in physical form. People generally still believe more in physical documents that can be seen and touched directly, compared to electronic documents that are abstract and require special technology to verify them (Garcia-Teruel, 2020).

One factor that has led to public doubt is the uneven understanding of the cryptographic technology used in electronic certificates (Effiong, 2020). This technology is considered complex and difficult to understand by most of the public, resulting in distrust of its security. In addition, cases of data leakage and cyber-attacks that are increasingly prevalent also strengthen public doubts about the security of electronic certificates as authentic deeds (Takaoğlu et al., 2023). On the other hand, there are also concerns about the legality and acceptance of electronic certificates in the existing legal system. Although legally recognised, the application in the field still encounters many obstacles. For example, not all government and private institutions are ready to fully adopt this technology. This is due to infrastructure limitations, untrained human resources, and the need for more comprehensive regulatory adjustments (Webster & Gardner, 2019).

This research aims to take a closer look at the legal provisions governing electronic certificates as authentic deeds and analyse the level of public acceptance and hesitation towards their use. By understanding the factors that influence this acceptance and doubt, it is hoped that policy recommendations can be formulated that can accelerate the widespread adoption of electronic certificates and increase public confidence in this technology. This research is also expected to

contribute to the development of a legal system that is more adaptive to the development of information technology (Schilling-Vacaflor et al., 2021).

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2. Method

This type of research is normative juridical research with an approach based on the main legal material by examining theories, concepts, legal principles and laws and regulations related to this research (Indriati & Nugroho, 2022). Johny Ibrahim's approach used in normative legal research does not rule out the possibility of a legal researcher using normative legal research methods but also utilising empirical legal findings, and for the needs of legal analysis in accordance with the character of normative legal science which further involves various empirical legal materials contained in norms such as legal history and legal cases that are decided.

3. Analysis and Results

3.1. Electronic Land Certificates or el certificates as authentic deeds and the provisions governing them

Property law is the law that regulates the relationship between legal subjects and objects and property rights. A property right (*zakelijk recht*) is a right that gives direct power over an object that can be defended by everyone. Defending property rights is certainly related to when there is a dispute or dispute between the parties and to show proof of the right. Article 1865 BW states that whoever claims to be entitled must show evidence of his rights. In other words, the burden of proof is on the plaintiff who denies or denies a legal event, therefore in a civil case it will only prove what is denied, not what is admitted by the parties. According to Sudikno Mertokusumo, proving contains several meanings, namely; Proving in a logical sense, means giving absolute certainty, because it applies to everyone and does not allow opposing evidence.

Proving in the conventional sense, means giving certainty but not absolute certainty but relative certainty which has the following levels Following main headings should be provided in the manuscript while preparing (Blanchard et al., 2021). The separation between main headings, sub-headings and sub-sub headings should be numbered in the manuscript with the following example: The main headings should be provided in the manuscript while preparing it, and the separation between main headings, sub-headings and sub-sub-headings should be numbered in the manuscript with the following example: -Certainty that is based only on feelings, so it is intuitive and is called conviction *intime*, -Certainty that is based on reasoning, so it is called conviction *raisonnee*, -Proving in the juridical sense (in civil procedure law), means nothing other than providing sufficient grounds for the judge examining the case to provide certainty about the truth of the events presented.

Soedikno Mertokusumo states that: whether something is evidence does not depend on whether it is presented in court, but is determined by its nature and is not determined by the fact whether or not it is presented in court. To understand electronic certificates as authentic evidence it is necessary to look at some of the relevant regulatory provisions such as. Burgerlijk Wetboek (KUHPperdata), the Electronic Information and Transactions Law (UU ITE), Ministerial Regulations (Ministerial Regulation No. 1 of 2021 concerning Electronic Certificates and others) and the Law on Electronic Certificates.

Types of evidence are regulated in Article 164 HIR / 284 RBg and Article 1866 BW / 164 HIR regarding types of evidence, namely: a) Written evidence, b) Witness evidence, c) Presumption, d) Confession, e) Oath. Specifically regarding written evidence, which must be kept by the relevant parties as the main evidence in the future, this evidence consists of deeds in the form of authentic and underhand deeds. Written evidence in the form of letter evidence, according to Sudikno Mertokusumo, is something that contains a sign that can be read and expresses a thought where the thought can be used as evidence. It can be interpreted freely that not all writings are letters, there are writings in the form of, for example, plans or maps, which do not contain the thoughts of a person.

Written evidence consists of 2 (two) types, namely authentic deeds and deeds under. An authentic deed according to Article 1868 BW is a deed made by a public official in accordance with the law, while a deed under the hand is a deed made and approved by the parties who make it and is binding on the parties who make it. Deeds under the hand are not made before an authorised official but only made by the parties making the agreement. Underhand deeds for Judges are free evidence, as long as it is not denied by the maker which is also recognised by at least two witnesses, the evidence can be used.

Specifically, evidence in the form of an authentic deed requires two things, namely; is a deed whose form is determined by law; is made by a public official who is authorised in the place where the deed is made. Electronic certificates, the existence of which is determined by article 147 of the Ciptakerja Law that ownership of land can be in electronic form. Public officials as stipulated by article 1868 BW, in this case in accordance with article 1 point 24 of Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration, which states that public officials who are authorised to make land deeds are Land Deed Officials hereinafter referred to as PPAT, Electronic land certificates are authorised by the Ciptaker Law, but the validity of officials authorised to make authentic land deeds has become a long polemic from the ITE Law, namely in article 5 of the UUUITE, which the ITE Law has gradually changed regarding this matter.

Authentic evidence is perfect evidence regulated in article 1870 BW judges do not need other evidence to decide cases other than based on the authentic evidence referred to. Sudikno Mertokusumo The perfect and binding evidentiary power contained in an authentic deed is a combination of several powers contained in it. If one of the powers is defective, it results in the authentic deed not having the value of perfect and binding evidentiary power. There are 3 evidentiary powers, namely; Formal evidentiary power, which proves between the parties, that they have explained what is written in the deed, Material evidentiary power, which proves between the parties concerned, that the event really happened according to what is stated in the deed, External or external evidentiary power, which proves not only between the parties concerned but also against third parties, that on that date they have appeared before a public servant and explained what was written in the deed.

It can be concluded that if the deed is not like the above, namely that it can be denied by the opposing party to its existence, the authentic deed does not function as a deed that has perfect evidentiary power, but has the value of a deed under the hand. Furthermore, related to article 1866 BW regarding letter evidence, this article recognises letter evidence in the form of authentic deeds and deeds under the hand but does not recognise electronic authentic letter evidence. The law is the terminology of the word, the definition of electronic documents as in

Article 1 number 1 of Law No. 11 of 2008, namely Electronic Information is one or a set of electronic data, including but not limited to writings, sounds, images, maps, designs, photographs, and others in the form of access codes, symbols, or perforations that can be understood by certain people. While the terminology of documents according to exilopedias is letters, deeds, charters, official letters and other recording materials, either written or printed, which provide information for scientific investigations, in a broad sense including all kinds of objects that can provide information about something. meaning that documents can be read and understood by everyone. In contrast, the definition of an electronic document can only be understood by certain people. Another problem with electronic certificates is the disclosure of information in civil trials.

Article 1886 of the Civil Code, stipulates that the parties request the judge to submit letters owned by both parties to the dispute. How is the mechanism for submitting electronic authentic evidence considering that this evidence is not a document with paper media. Then in article 137 HIR the parties are asked by the judge to show the certificates owned by the opponent of the dispute and vice versa. Because the document is electronic, the Internet must be active and TV monitors must be available in every courtroom throughout Indonesia to open the barcode to show the parties the electronic certificate in question. This will undoubtedly complicate the trial process because not all courts have the necessary facilities. In contrast, analogue certificates can be brought by the public to the courtroom for display. The next issue is Article 1888 BW, which states that the evidentiary force of a deed lies in the original deed and not in a copy or excerpt of the deed or a photocopy. In the case of electronic certificates, the public holds an excerpt of the deed, while the original is stored on a server owned by the Ministry of Land and Forestry. Regulation of the Minister of Agrarian Affairs and Spatial Planning of the Head of the National Land Agency of the Republic of Indonesia No. 3 of 2023 on the Issuance of Electronic Documents in Land Registration Activities, article 1 point 9, states that electronic certificates are stored in the form of electronic documents in BT-e1 BT el or electronic land books.

There are many forms of data storage but for large capacities there are two storage places namely; Storage on premise servers. Storage and processing of large amounts of data where the server location is within the company / agency building itself. Has a tighter and more secure security setting feature than Cloud Storage. This system gives full control to the company / agency to set its own rules and determine. this system requires a reliable IT team. In the Cloud Storage system, the authority to access the system is indeed given entirely to the cooperating tenant company / agency, but to regulate and control access rights is slightly limited. Companies / Agencies can only manage according to the features provided by the vendor (Wang et al., 2022). Whereas for large-scale companies/agencies with strict information levelisation, companies need more detailed access rights settings. It is easier to manage because maintenance is scheduled by the company/agency itself and carried out by the internal IT team; Storage on cloud or in the cloud Digitisation technology allows virtually unlimited data storage. By using cloud computing or cloud computing. Data can be accessed from anywhere with an internet connection, enabling collaboration and high flexibility. Storage capacity can be easily increased as needed, without the need for additional hardware. Cloud service providers usually offer high-level security features, such as data encryption, multi-factor authentication, and automatic backups. Data stored in the cloud is easier to recover in the event of a physical disaster or data loss on local devices. It does not require a large investment in hardware or physical storage infrastructure, paying only rent according to usage. Cloud providers handle software updates and infrastructure maintenance, reducing the burden on users.

3.2. Public doubts about electronic proof of ownership of land rights

The government's efforts to keep up with technology by enforcing electronic certificates and storing them on servers invite pros and cons (Brown & Marsden, 2023). Of course, the public is not against change, especially against the development of informatics technology that offers convenience and practicality, but people are worried about how the law is able to anticipate developments in the field of electronics to be able to provide security, especially in electronic

certificates whose original data is stored on the server owned by the National Land Agency. Land certificates are proof of ownership of land and building rights which not only have a high financial value but can also cause social problems if a dispute occurs.

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These concerns are not unreasonable, some data storage systems are easily attacked by hackers. Hackers are invisible criminals but their actions are real and have no small economic value, they carry out extortion in public spaces openly. As recently as 20 June 2024 Brain Cipher Ransomware attacked the National Data Centre and extortionists demanded a ransom of 131.2 billion rupiah if they wanted the data returned. As a result, immigration services were paralysed for 100 (one hundred hours).

Previously, on 13 May 2023, the social media universe was shocked by a tweet from the @darktracer_int account which mentioned the existence of a group of LockBit 3.0 ransomware specialist hackers who claimed to be the party that had carried out an attack on the Bank Syariah Indonesia banking service system. LoctBit also threatened BSI to contact it immediately to negotiate regarding 1.5 TB of customer data that was threatened to be disseminated if it did not meet its demands by the deadline on Tuesday 16 May at 4am. However, on 11 May 2023 BSI management stated that its services had been restored. What happened to BSI was the data backup reliable enough that the system was restored properly. Another incident in 2016 Dharmais Hospital Jakarta was also breached by hackers by asking for a ransom of Rp 500 million (five hundred million rupiah) as well as the incident at BSI, no information was obtained on how Dharmais Hospital resolved the problem (Smith & Browne, 2021).

However, the government will still run the electronic land certificate programme in stages determined by the Minister of Land Affairs / head of the BPN, the implementation of electronic land registration according to article 2 paragraphs 1 and 2 of Regulation of the minister of agrarian and spatial planning / head of the national land agency of the republic of Indonesia number 1 of 2021 concerning electronic certificates includes a) land registration for the first time b) maintenance of land registration data.

4. Conclusion

Electronic certificates as authentic deeds are in accordance with Article 1868 BW, because land certificates in electronic form are valid land rights according to Article 147 of the Ciptakerja Law, namely Law Number 11 of 2020. And the public official, namely the PPAT, who signs it is considered valid evidence because article 5 paragraph 4 of the second amendment to UUIITE Number 1 of 2024 no longer prohibits it, but leaves it to other laws to regulate it. However, on the other hand, there are things that still need to be questioned, namely article 1866 BW regarding written evidence in the form of authentic deeds and deeds under hand. BW does not recognise electronic authentic deeds while BW still applies as positive law. Then related to 1886 BW, the parties ask the judge how to submit related evidence because it is electronic and article 137 HIR shows documentary evidence of ownership of the disputed land before the court which of course must be supported by hardware such as monitors and software that must be ready at all times. There is also the very important public concern that, according to Article 1888 BW, proof lies in the original deed, not in an excerpt or copy, whereas in the case of electronic certificates, the original deed is stored on a server. The public only has an extract, and there are

concerns about the security of the original deed. This concern is justified because there are several examples of hackers tampering with national data and then demanding a ransom.

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