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The Urgency of Legal Protections for Corporate Entities in Bank Credit Applications Based on Electronic Land Certificates

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Abstract: The Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency (Permen ATR/BPN) Number 3 of 2023 on the Issuance of Electronic Documents in Land Registration was enacted by the government to improve the quality of public services related to land registration activities while also providing protection for citizens' data regarding land rights. This regulation serves as the legal foundation for the use of electronic systems in land registration processes, the use of electronic documents during land registration, the utilization of electronically converted documents, and the legal recognition of electronic land certificates. One of the highlights of this regulation is the implementation of electronic land certificates for land rights holders. According to Article 1 point 9 of Permen ATR/BPN Number. 3 of 2023, an electronic land certificate is defined as a certificate issued through an electronic system, formatted as an electronic document, and stored in electronic land registers. Based on this description, it can be understood that the electronic land certificate represents the government's commitment to optimizing the use of information technology in services related to land ownership rights. Through the adoption of information technology, it is expected that risks associated with physical document damage and theft can be minimized, ease of access for land rights holders can be enhanced, and the issuance process of land certificates can be expedited. In addition to discussing the benefits of electronic land certificates, this paper also examines the legal protection afforded to legal entities as holders of land rights, particularly corporations. Corporations are the central focus of this journal, as land certificates are among the most common and widely used collateral objects for bank credit facilities.

Keyword: Electronic Land Certificates, Corporate Entities, Collateral, Bank Credit Facility.

INTRODUCTION

The development of science, especially in the field of technology, is constantly changing and improving along with the times so that it has direct legal implications for social life. With the advancement of technology, it is hoped that it can have an instant impact in the form of improving the welfare of the community while still adhering to the value of *ius constituendum* (aspired law) in the form of certainty, justice and legal usefulness. One impact of these technological advances is the birth of electronic land certificates. The emergence of electronic

land certificates itself is still a matter of debate and interesting discussion among the public because it raises pros and cons regarding the security aspects of electronic data. The issue of data security is a relevant discussion because a cyber threat does not only affect the protection of individual legal subjects and personal data, but also involves the security and sovereignty of the state.

This is evidenced by a report on February 18, 2013 released by a US private cyber force company called Mandiant which stated that there had been data attacks on nearly 150 (one hundred and fifty) US organizations in the last 7 (seven) years carried out by a group called "Advanced Persistent Threat" (APT1). Mandiant concluded that APT1 was a core part of Unit 61398 of the Chinese People's Liberation Army. After the report was published, the United States government strongly criticized China's actions and stated that China was the main source of cyber attacks in the world of technology. In response to this criticism, the Chinese government certainly did not remain silent and stated that the United States was the real country that had carried out many cyber attacks against various countries and the main targets were China, Russia, Iran and North Korea with nearly 231 (two hundred and thirty-one) attacks in 2011.

The statement from the Chinese government itself is in line with the report leaked by Edward Snowden to the public. Given the serious discussion of data security issues that can cause harm not only to individuals but also to the sovereignty of the state, it is clear that these security issues are becoming increasingly relevant in the national context, especially in Indonesia, which is currently focusing on developing technology and digital data in various lines of government, especially in the land and financial banking lines. The emergence of electronic land certificates is a game changer that has major implications for the ease and smooth running of public services by the government and has far-reaching legal implications for lines of business and the economy with the greatest concentration in the field of security law. In addition to security aspects, an interesting aspect of further discussion is the validity of electronic certificates as a means of corporate collateral in applying for bank credit as part of business and the economy.

Electronic certificates as a result of legal products created by the government should provide protection and legal certainty to their owners in order to maintain the purity of the validity of the certificates. Legal protection itself is defined as the government's efforts to ensure the legal certainty of its citizens so that the rights of a citizen cannot be violated and there is protection by providing strict penalties against those who violate it as applicable provisions. In addition, the law as a set of regulations established by the state can be a means of protection with preventive or repressive mechanisms .

The protection of the law itself is not exclusive only for legal subjects in the form of individuals (*natuurlijk persoon*) or in other languages "citizens" as explained earlier but can also protect legal subjects in the form of legal entities (*recht persoon*), one of which is a corporation. This statement is supported based on Professor Watson's thoughts in his book entitled *The Making of The Modern Company* which explains that corporations are formed due to the participation of the state and therefore the existence of a corporation as an entity of legal subjects is used in the purpose of managing private funds. With reference to the explanation of legal protection, it should be Permen ATR / BPN No.3 of 2023 concerning the Issuance of Electronic Documents in Land Registration Activities can act as a guarantor of legal certainty for holders of land rights (not limited to whether the holder of land rights is in the form of an individual or legal entity) as well as being a tool of state legal protection that has preventive and repressive properties. In addition to being a basis for legal protection of land rights certificate holders, Regulation ATR/BPN No.3 of 2023 concerning the Issuance of Electronic Documents in Land Registration Activities was born philosophically as a form of manifestation of Article 33 paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UDN NRI)

which states that "the earth, water and natural resources contained are controlled by the state and utilized to the greatest extent for the prosperity of the people".

This form of embodiment is clear evidence that the state has the right to own (domain) and has the authority (rights) in regulating, planning and implementing land utilization as part of natural resources. The right to own and the right of state authority over land has also been clearly and explicitly stated in Article 1 paragraph (2) of Law (UU) No.5 of 1960 concerning Basic Regulations on Agrarian Principles which explains that "all parts of the earth, water and space including the wealth contained therein within the territory of Indonesia are gifts of God Almighty and are national wealth". Based on these legal bases, the issue of the validity of electronic certificates has been clearly answered because there is an active role of the state in protecting and guaranteeing the rights of all parties who own electronic land certificates, including corporations as part of a legal subject in the form of a legal entity that has rights and authorities.

METHOD

The research method used in this paper is normative legal research. Normative legal research is used with studies and library research by relying on the main data in the research in the form of secondary data which is analyzed normatively and in depth through primary legal materials in the form of laws and regulations with the main focus being Permen ATR / BPN No.3 of 2023 concerning the Issuance of Electronic Documents in Land Registration Activities, secondary legal materials in the form of supporting legal textbooks, legal journals and tertiary legal materials in the form of legal dictionaries and other supporting materials.

Normative legal research itself has a prescriptive disciplinary view of law which tends to look at a law in terms of its norms and look more broadly at the whole law from a normative point of view. In addition, in terms of normative legal research, the approach method used is through the methodology of the provision approach, legal concept approach, case approach, historical approach, legal comparison approach, fact approach and phrase approach. From this approach, the results are obtained in the form of analysis in legal research of the problems faced. Based on these explanations, reasons can be drawn regarding the research methods that will be used in writing this problem and research with normative legal methodology is carried out with the aim of obtaining an in-depth understanding of the legal issues under study in the form of Legal Protection Against Corporations in Applying for Banking Loans Based on Electronic Land Certificates. Normative legal research is very supportive in the preparation of writing.

RESULTS AND DISCUSSION

The Concept of Electronic Land Certificates in Indonesian Land Management

Land certificate as a document proving the existence of ownership of land rights by a legal subject is a form of legal certainty and protection provided by the state and this is realized in Article 19 paragraph (1) of Law No.5 of 1960 concerning Basic Regulations on Agrarian Principles which in essence states that legal certainty (*rechts kadaster*) by the government is realized by land registration throughout the territory of the Republic of Indonesia based on provisions regulated by Government Regulations. In addition, in paragraph (2) of the same Article and Regulation, it is also explained that in registration, activities are carried out including actions in the form of:

1. Measurement mapping and land bookkeeping
2. Registration of land rights and transfers of rights
3. Providing proof of rights that can serve as valid evidence.

From the explanation of Article 19 of Law No.5 of 1960 concerning Basic Regulations on Agrarian Principles above, it can be understood that land certificates are obtained by legal subjects after the implementation of the land registration process and the land registration process itself is carried out with activities in the form of mapping measurements, registration

of land rights and providing proof of rights as a series of valid juridical and scientific evidence activities.

Related to the process of registration of land rights in order to obtain a land certificate then to find out the institution that has the authority can refer to Article 1 Government Regulation (PP) No.10 of 1961 concerning Land Registration . In Article 1 of PP No.10 of 1961, it is stated that land registration is organized by the Land Registration Committee according to the provisions in this Government Regulation and it can be seen that what is meant by the Land Registration Committee is the Ministry of ATR / BPN.

Given that land certificates are prepared with physical and juridical proof by the Ministry of ATR / BPN, it is an appropriate reason from Article 19 paragraph (2) of Law No.5 of 1960 concerning Basic Regulations on Agrarian Principles to state that land certificates are strong legal evidence, although their absolute value can still be legally debated because more in-depth testing is needed in court regarding the measurement and valuation methodology in the Land Book and Land Measurement Letter.

With the implementation of Permen ATR/BPN policy No.3 of 2023 concerning the Issuance of Electronic Documents in Land Registration Activities which has changed the entire order of physical documents into electronic form, including in this case land certificates, of course this digital transformation effort not only provides a view of technological developments in the field of public services but also has legal implications in the land system in Indonesia. These legal implications include:

1. Changes in the work patterns and processes of the Ministry of ATR/BPN

Changes in the work patterns and processes of the Ministry of ATR / BPN will be carried out with a focus on maximum utilization of electronic systems in accordance with Article 1 number 10 of Permen ATR / BPN No.3 of 2023 concerning Issuance of Electronic Documents in Land Registration Activities which explains the electronic system is an important part in preparing, collecting, processing, analyzing, storing, displaying, announcing, sending and / or disseminating electronic information in land registration activities. In addition, in practice, the Ministry of ATR/BPN will have a lot to do with the use of electronic information, electronic documents, electronic signatures and electronic databases.

2. Implementation of Ministry of ATR/BPN Service Reform

The implementation of electronic land certificates has resulted in major and fundamental changes to the operation of land services in Indonesia to date. With electronic land certificates as the main trigger tool for reform of public services, the attitude and behavior of the Ministry of ATR / BPN as a bureaucracy in the delivery of public services will be determined by how the use of bureaucratic DNA is managed, namely through purpose, accountability, consequences, power and culture (heritage) well. Of course, it is expected that this electronic-based service reform will have a very large impact of convenience and benefits on the community. The ease and speed that occurs due to the service reform of the Ministry of ATR / BPN also has a positive impact on corporations because it will increase the ease of managing land operations as well as erode the culture of extortion that is present in land practices.

3. Changes in Power Relations

The digitization of the administration of the national land system developed by the Ministry of ATR/BPN can change the power relations of land understanding. The ease of access to electronic land certificate information through the touchtanahku application developed by the Ministry of ATR/BPN will reduce asymmetry or inequality of information and knowledge and can increase public understanding of the importance of mastering land knowledge. In addition, the existence of activities that are very loaded with the use of technology such as land registration applications for the first time through filling out application forms and uploading them online, collecting juridical supporting documents will certainly provide a strong force on the community on the importance of mastering technology and understanding the juridical aspects of land. In addition, in the context of corporations, the use of digitalization of the land

system will greatly facilitate corporations in carrying out land information searches quickly, precisely and accurately.

4. Economic Policy Changes

The ease of collecting information digitally can provide great positive value to the business world as well as increase the investment potential of business actors in the land sector. The ease of land registration and electronic certification will certainly be a business catalyst in transactions involving the land sector:

- a. Accelerated business decision-making
- b. Advantages over competitors
- c. Work efficiency and effectiveness
- d. Risk reduction with information technology
- e. New business opportunities
- f. Decrease in operating expenses
- g. Lower risk
- h. Fast Communication
- i. Provides a sense of security

This positive outcome means that the use of electronic land certificates will have a very good impact on improving the economic decision-making of business actors, especially corporations.

With this explanation of the concept of electronic land certificates in Indonesia, it can be concluded that the process of digitizing land certificates is not only procedural and ceremonial modernization but also modernization of legal aspects, aspects of bureaucratic services, changes in public and corporate understanding of land and its positive impact on the national economy. The implementation of electronic land certificates in Permen ATR/BPN No.3 of 2023 concerning the Issuance of Electronic Documents in Land Registration Activities is also evidence of the government's strong commitment to legality, protection and legal certainty.

Legal Aspects of Banking Credit with Mortgage Guarantee

In concept, an agreement is a legal relationship between two or more parties based on the principle that one party has the right to demand something and the principle that the other party is obliged to fulfill the demands made by the other party. Meanwhile, the agreement itself is an event where one party promises the other party to do something and from this event, what is called an obligation is born. Based on Article 1233 of the Civil Code, it is explained that the obligation comes from the agreement and the source of the law.

The obligation itself has a tangible nature (abstract) while the agreement is real (concrete). From this explanation, it can be understood that when the bank as the creditor and the party applying for the loan as the debtor carry out the signing of the credit agreement, a legal relationship is born which gives rise to important rights and obligations that must be fulfilled by both the bank and the debtor and an obligation (*verbindtenis*) is born as the basis for the obligations of the parties. In the context of banking itself, credit agreements are generally standardized (standard contract) in which the clauses in the agreement have been standardized by the bank and made in the form of a form (blank) for reasons of practicality and are not bound in a certain form (*vorn vrij*).

The existence of this standardized form of credit agreement will harm the debtor's position considering that the debtor does not get the opportunity to change or participate in compiling the form of the credit agreement. Due to the disadvantage to the position of the debtor, more thoroughness is needed before signing a credit agreement and more attention is needed to clauses related to credit payments and their derivatives in the form of interest, administrative fees, provisions and so on. In addition, the main thing that needs to be the main concern of the debtor is the clause relating to collateral. In essence, in granting credit, banks prioritize the first

way out principle, where the bank believes that the debtor is able and able to repay the credit channeled and the collateral serves as a material guarantee for the credit granted to the debtor (second way out).

For the existence of collateral as a last resort for banks to collect their repayment rights, banks prioritize collateral that has marketable criteria, aka collateral can have high economic value and is easy to sell, transferable, aka collateral can be transferred easily and collateral has perfect juridical value, aka collateral has a perfect legal position.

With these criteria, one of the forms of collateral institutions commonly used in the world of bank credit is mortgage rights. Mortgage rights themselves in essence based on Article 1 number 1 of Law No.4 of 1996 concerning Mortgage Rights are security rights that are imposed on land rights along with objects that become a unity on it to guarantee the debtor's debt to creditors. Based on this explanation, mortgage rights as a collateral institution provide a certainty of position and legal protection to the bank as a creditor and become an integral part of the main agreement, namely the credit agreement. In connection with the presence of electronic land certificates as collateral objects bound by the institution of binding of mortgage rights and in practice often used by corporations as bank debtors, a legal certainty is needed that can protect the corporation.

Urgency of Legal Protection against Coroporation of Credit Collateral in the Form of Electronic Land Certificates

Corporations as legal subjects in the form of legal entities and in the capacity of debtors in credit agreements with banks have legally valid rights and obligations. In the practice of credit agreements, corporations often apply for credit with collateral in the form of land certificates because land certificates are objects of collateral that have high value and become added value in terms of assessing the feasibility of corporations as debtors. Along with the digitalization program of land services which has an impact on the birth of electronic land certificates regulated in Permen ATR / BPN No.3 of 2023 concerning the Issuance of Electronic Documents in Land Registration Activities certainly raises many questions and challenges. These questions and challenges include:

1. Limited digital infrastructure in some areas

Uneven development of supporting digital infrastructure such as internet networks in some areas of eastern Indonesia can cause losses to corporations that will access the touchtanahku application.

2. Cybersecurity aspects

The issue of data protection is still a very hot topic in Indonesia, especially after several incidents of cyber attacks on population data and leaks of public telephone number data. Of course, the cybersecurity aspect is a challenge that is very difficult for corporations considering that data on property in the form of land is a confidential aspect of business.

3. Inadequate public understanding

Education and socialization related to the digitalization of land services as well as the change in the form of land certificates from analog to electronic needs to be promoted to prevent potential conflicts and lawsuits between communities and corporations or vice versa.

4. Affirmation in regulation

In the formation of Permen ATR/BPN No.3 of 2023 concerning the Issuance of Electronic Documents in Land Registration Activities, there are still several provisions that can become loop holes for corporations, such as the process of converting analog certificates into electronic form, which requires data verification, re-measurement and updating of land data. These processes can be detrimental to corporations given the potential for changes in land area, the potential for extortion from field officers, the potential for conversion to fail due to multiple claims to ownership of analog certificates.

5. Agency coordination is not yet optimal

The establishment of the ATR/BPN Ministerial Regulation No.3 of 2023 on the Issuance of Electronic Documents in Land Registration Activities is still a question related to the auction process, since this regulation is still not well coordinated with the State Wealth and Auction Service Office (KPKNL), so that often the issue of auctions cannot be carried out because of differences in analog certificate numbers that have been converted to digital. This process itself is motivated by the change in the certificate number to 14 (fourteen) digits in electronic form. Failure to conduct an auction of collateral for a corporation that has defaulted on a loan to a bank may result in a lawsuit and a decline in the corporation's reputation in the business world.

6. Low level of public trust

The low level of public confidence in electronic land certificates is bound to raise concerns about corporations selling landed property. Concerns about a fall in the value of land with electronic certificates could have negative implications for the land sales market.

7. Financing digital development

This fundamental and widespread change in the issuance of electronic land certificates will inevitably result in additional funding for the maintenance of land technology and digital data systems.

From the explanation of the various questions and challenges regarding electronic land certificates as corporate credit collateral, it can certainly be concluded that a solution is needed in the form of legal protection for corporations as owners of electronic land certificates. To answer these questions and challenges, Ministerial Regulation No.3 of 2023 on the Issuance of Electronic Documents in Land Registration Activities has provided an explanation in the form of recognition of electronic land certificates as strong and valid legal evidence, the mechanism for converting analog land certificates into digital ones and the scope of digitization of electronic services. In addition to the challenges associated with the implementation of electronic land certificates, the Ministry of ATR/BPN has made several other supporting efforts in the form of:

1. Guaranteeing the protection of land rights data

The Ministry of ATR/BPN has provided certainty for the protection of electronic land certificate data through electronic data authentication mechanisms. In addition, there are also several additional safeguards such as the electronic signature of the official certifying the land, special ink produced exclusively for the Ministry of ATR/BPN and the use of QR codes that can be scanned through the touchtanahku application.

2. Employee Knowledge Training

The Ministry of ATR/BPN, through its Human Resources Development Center (PPSDM), has repeatedly been active in training employees on electronic land certificates and how to address the challenges they face.

In addition to these two measures, the implementation of electronic land certificates is guaranteed by a number of provisions such as:

1. Law No.11 of 2020 on Job Creation

Article 147 of this law states that electronic land certificates are an effort by the government to encourage the efficiency and effectiveness of land services as well as to accelerate the issuance of land rights for land rights holders.

2. Law No.11 of 2008 on Electronic Information and Transactions

Article 5 paragraph (2) and Article 6 of this law state that electronic documents are valid evidence in court.

By looking at the position of electronic land certificates as part of electronic documents based on Permen ATR / BPN No.3 of 2023 concerning the Issuance of Electronic Documents in Land Registration Activities, of course the presence of this law is the basis for strengthening the argument that electronic land certificates have been recognized for their validity and strength based on various existing regulations and therefore it is no longer relevant to question the evidentiary power of electronic land certificates in the eyes of the law.

Although on paper Permen ATR / BPN No.3 of 2023 concerning the Issuance of Electronic Documents in Land Registration Activities has provided a solution, the solution offered seems only administrative in nature and has not touched on other legal essence and specifically on the point of failure to convert certificates into electronic, changes in land area to the potential for vertical conflict between corporations and the Ministry of ATR / BPN as the agency that has the power and authority to determine land rights.

Therefore, this problem requires a derivative regulation to complement Permen ATR/BPN No.3 of 2023 concerning the Issuance of Electronic Documents in Land Registration Activities which is more protective of the legal interests of land rights holders, especially corporations as the driving force of the country's macro and micro economy.

Permen ATR/BPN No.3 of 2023 concerning the Issuance of Electronic Documents in Land Registration Activities is an important trigger in the digitalization transformation of land services in Indonesia, especially through the implementation of electronic land certificates. In the world of banking credit, the implementation of electronic land certificates provides a new color in the form of work efficiency and transparency but also presents new challenges in the form of the value of certainty and legal protection, especially for corporations as debtors. Of course, the birth of electronic land certificates is expected to provide protection beyond analog certificates

CONCLUSION

Corporations as part of the legal subjects that play a role in the use of land as collateral for bank loans certainly need guarantees that their rights are maintained, especially with regard to issues of proof of rights and the validity of electronic land certificates. Electronic land certificates, although stated as a legally valid means of proof in Permen ATR/BPN No.3 of 2023 concerning the Issuance of Electronic Documents in Land Registration Activities, still require strengthening from the aspects of digital infrastructure, cyber security and strengthening regulations between government agencies. Therefore, for these various challenges, it is necessary to improve good legal norms in order to provide justice, certainty and legal protection to corporations as well as a tangible proof of the government's participation in maintaining a conducive and good business climate.

In carrying out the succession of the digitization process of public services, the government requires the active participation of the community, considering that the community is the main subject of public services. In addition, the government in carrying out the digital transformation process must not forget the importance of law as a guideline as well as an opening road for policies that will be carried out by all public servants. In the context of drafting regulations, the community needs to be critical and understand the rules that will be set in order to provide the final output in the form of maximum and directed public services.

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