

The Position of Land Certificates as Proof of Ownership in Resolving Land Rights Disputes in Mining Areas

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Abstract. *The position of land certificates as proof of ownership in resolving land rights disputes in mining areas still has problems, namely the emergence of perceptions that are dismissive of authentic deeds. In fact, this will give rise to the dynamics of land law in society. The objectives of this study are to analyze: 1). The legal force of the land certificate is examined in relation to land rights in the mining business permit area. 2). The role of Notaries in using land certificates as proof of ownership. The approach method used in discussing this research problem is a normative juridical research type. The research specification used is analytical descriptive research. The type of data uses primary and secondary data. The data analysis method used in this study is qualitative data analysis. The results of the study concluded: First, theoretically the position of SKT is a weak evidence, because it is made underhand without going through a legalization process by a Notary official, considering that only a Notary can issue an authentic deed. Second, there is a gap between theory and practice, with the reason that in practice judges often disregard authentic deeds in adjudicating land dispute cases. This can be seen in Decision Number: 24 / G / 2014 / PTUN.KDI and Decision Number: 27 / G / 2016. PTUN. KDI.*

Keywords: Land Certificate; Notary; Ownership.

1. Introduction

In the daily practice of land issues in Indonesia, there are still many unregistered or uncertified lands, but they are owned by community members with proof of land certificates issued by the Village Head. These unregistered lands are generally found in rural areas. Where land ownership rights are only proven by a land certificate issued by the Village Head and the implementation of the sale and purchase transaction is also carried out on the basis of trust between the seller

and the buyer by making a private deed signed by the buyer and the seller and witnessed by two witnesses and acknowledged by the Village Head.¹

This nomenclature is known as a Land Certificate (SKT), which includes the legal basis for land rights, which is generally used as a requirement in the process of applying for land certificates by the National Land Agency (BPN). Following the issuance of Circular Letter No. 1756/15.I/IV/2016 from the Minister of ATR/BPN concerning guidelines for implementing community land registration, SKT is no longer required in the land registration process, thus based on applicable laws and regulations.² In connection with the Circular, the Minister of Agrarian Affairs and Spatial Planning, provides convenience for accelerating community land registration, no longer including a land certificate. As a requirement for certification as regulated in Article 76 paragraph (3) letter b of Permenag No. 3 of 1997, which states that "when there is incomplete or no basis for control and/or proof of ownership, it is sufficient to provide proof with a statement as attached to the Circular."³

Among the general public, the importance of land title certificates as strong evidence in the event of a dispute is not yet fully understood. This is because there are so many types of land certificates available, such as Land Certificates, Land Management Certificates, and other certificates issued and/or recognized by the local government. This is despite the clear provisions of the Basic Agrarian Law (UUPA) and Government Regulation No. 24 of 1997, which state that certificates are strong evidence to guarantee legal certainty over land ownership, whether controlled by ownership rights, building rights, use rights, or other rights that are subject to land registration.⁴ PP Number 18 of 2021 is regulated in Article 97 which states that land certificates, compensation certificates, village certificates, and other similar certificates which are intended as evidence or information regarding control and ownership of land which have been issued by the Village Head/Lurah/Camat only serve as instructions used in the context of land registration.⁵

The process of obtaining land ownership rights, as seen in the Basic Agrarian Law,

¹Muchtar Rudianto, (2010), *Perjanjian Pengikatan Jual-Beli Sebagai Perjanjian Pendahuluan*, Jakarta: Rajawali Press, p. 38

²Noor Atikah, "Kedudukan Surat Keterangan Tanah sebagai Bukti Kepemilikan Hak Atas Tanah dalam Sistem Hukum Pertanahan Indonesia", *Jurnal Nolak*, Vol. 1, No. 3, July 2022, p. 264. url: <https://ijsshr.in/v6i7/91.php>

³*Ibid.*

⁴Abdul Muthallib, "Pengaruh Sertifikat Hak Atas Tanah Sebagai Alat Bukti Dalam Mencapai Kepastian Hukum", *Jurnal Ilmu Syariah*, Vol. 12, Edisi 1, 2020, p. 36. Url: <https://journal.iainlangsa.ac.id/index.php/jurisprudensi/article/view/1673>

⁵Desy Nurkristia, "Asas Kepastian Hukum Dalam Kedudukan Girik Terhadap Sertipikat Hak Atas Tanah", *Jurnal Suara Hukum*, Vol. 3, No. 2, September 2021, p. 255. Url: <https://erepository.uwks.ac.id/15163/1/Asas-Kepastian-Hukum-Dalam-Kedudukan-Girik-Terhadap-Sertipikat-Hak-Atas-Tanah.pdf>

states that a land title certificate is the initial step or basis for obtaining a land title certificate. However, by having a land title certificate, people feel their rights are secure and protected. This land title certificate is also recognized by the government as one of the proofs in applying for a land title certificate to obtain a right under the UUPA. People prefer to use land title certificates issued by the Village Head/Lurah (village head) and the Sub-district Head because they are more affordable.⁶ The SKT serves as a letter from the Village Head that confirms the Land Ownership Declaration. The Land Certificate is a document that shows ownership or control of land and rights thereto, as determined by the Village Head where the land is located and confirmed by the local Sub-district Head.⁷ It's just that the SKT in proving ownership, its legal force is not as strong as a certificate. The practice of relying on SKT in land ownership occurs in the RegencySouth Konawe, Southeast Sulawesi Province, as analyzed by the author based on Decision Number 24/G/2014/PTUN.Kdi. In this case, a group of residents challenged the legality and status of land rights managed for mining business permits by PT Gerbang Multi Sejahtera (GMS).⁸

2. Research Methods

The research methods consist of: First, the approach method uses a legislative approach and a conceptual approach. Second, the research specifications use a descriptive analytical paradigm. Third, the data collection method uses a literature study and documentation study. Fourth, the data analysis method systematizes the legal materials.

3. Results and Discussion

3.1. The Position of Land Certificates as Proof of Ownership in Resolving Land Rights Disputes in Mining Areas

At the stage of case resolution in the Court, the verification program is the most important stage to show the truth of the occurrence of an incident or correlation of certain rules, or the existence of a right, which is used as the basis by the plaintiff to file a lawsuit in Court. Assessing evidence, there are 2 theories bound by the Law and the judge can act freely, namely the theory of proof submitted by the parties to the case, the judge is free to assess the evidence, both evidence

⁶Tuti Rezki, "Kekuatan Hukum Surat Keterangan Hak Atas Tanah Yang Diterbitkan Oleh Camat", *Jurnal Varia Hukum*, Edisi No. XL Tahun XXXI March 2019, p. 1951. Url: <https://jurnal.um-palembang.ac.id/variahukum/article/view/1736>

⁷Tiar Ramon, "Tinjauan Yuridis Terhadap Kekuatan Ala T Bukti Surat Keterangan Sebagai Hak Milik Atas Tanah (Studi Kasus Putusan Mahkamah Agung Perkara Nomor 633 K/Pdt/2017)", *Jurnal Hukum Das Sollen*, Vol. 4, No. 2, December 2020, p. 10-11. Url: <https://ejournal.unisi.ac.id/index.php/das-sollen/article/view/1415>

⁸ <https://rakyatpostonline.com/2020/11/08/soal-penjualan-lahan-ilegal-di-morosi-pt-vdni-dinilai-turut-bertanggung-jawab/>, accessed from December 28, 2022.

regulated or not regulated by the Law, and the theory of proof, the judge is bound by the evidence submitted by the parties to the case. The decision handed down must be in line with the evidence submitted in the trial.⁹

This sub-chapter will explain the practice of providing evidence in court that the author will examine by contextualizing the research through three decision studies, in this case as follows: First, Decision Number: 24/G/2014/PTUN.KDI. Second, Decision Number: 27/G/2016. PTUN.KDI.

The evidentiary assessment is the Judge who assesses the evidence that has been submitted to the parties in accordance with the facts in an act. However, the Judge has limitations in doing something related to evidence, therefore in this case the Judge is prohibited with exceptions as regulated in Article 169 HIR, Article 306 Rbg or Article 1905 of the Civil Code. The positive evidentiary system is a system of evidence adopted in the civil procedural law system in Indonesia which is based on evidence that has been determined by law in a positive manner with an assessment of the evidence. Therefore, the assessment of the evidence can be done without the need for a Judge's conviction.¹⁰

A judge's conviction is not a mere "myth" or wishful thinking; it must be based on evidence. Without evidence, a judge's conviction is questionable, so it must be based on its relationship to the evidence.

A crucial issue in the law of evidence is the distribution of the burden of proof. This distribution of the burden of proof must be carried out fairly and impartially, because a lopsided distribution of the burden of proof means a priori that it will lead the party receiving the excessive burden to defeat. The issue of the distribution of the burden of proof is considered a legal or juridical issue, which can be pursued up to the level of cassation, namely the Supreme Court. Carrying out an unfair distribution of the burden of proof is considered a violation of the law and is grounds for the Supreme Court to annul the decision of the judge or the relevant district court and high court.¹¹In fact, it is not uncommon for the Court to side with evidence which, based on simple logic, should be suspected of being legally weak.

Judges often fail to adhere to the correct legal doctrine, specifically regarding the use of the highest level of evidence. In this case, the judge ruled in favor of PTG

⁹Fakhriah, E.L., (2013), *Bukti Elektronik Dalam Sistem Pembuktian Perdata*, Bandung: PT. Alumni, p. 23.

¹⁰ Patricia Inge Ayuningtyas Michael & Luluk Lusiati Cahyarini, "Kekuatan Verifikasi Akibat Cetakan (Screenshot/Printscreen) dan Pertimbangan Hakim pada Aspek Perkara Perdata", *Jurnal Notarius*, Vol. 17, No. 1, 2024, p. 287. Url: <https://ejournal.undip.ac.id/index.php/notarius/article/view/42326>

¹¹Maisara Sunge, "Beban Pembuktian Dalam Perkara Perdata", *Jurnal Inovasi*, Vol. 9, No 2, June 2012, p. 1. Url: <https://jurnal.iainwpancor.ac.id/index.php/fikroh/user/setLocale/id>

(the defendant), even though PTG himself lacked an authentic notarial deed regarding physical ownership of the land, but instead relied on the Land Ownership Certificate (SKT).

3.2. The Role of Notaries in Using Land Certificates as Proof of Ownership

Legal facts show that notaries are not involved in the land use process for mining business areas. This is despite the importance of involving notaries, as they require a deed as proof that residents own land within an IUP area. This allows for easy detection of legally valid transfers of rights.

Based on an investigation into the IUP permit application system in Indonesia, the author found that the government has traditionally based IUP determinations on recommendations from relevant agencies, without involving notaries. This often leads to overlapping land ownership within the community. Therefore, the role of notaries is necessary, through the requirement to upload a notarial deed to the permit system stating that the surrounding land, which belonged to the residents, has been transferred.

The existence of a notarial deed is evidence of legal certainty. As society has begun to recognize the importance of ensuring legal certainty for everyday actions and deeds, many people are documenting these in notarial deeds, whether in the form of contracts involving other parties or simply to express a specific intention, with the hope of achieving legal certainty in the future.¹²

Notaries are public officials in the legal field who play a significant role in law enforcement in Indonesia. Law Number 02 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries states that "notaries are public officials authorized to draw up authentic deeds and exercise other authority." Notaries have a distinct position, so their authority cannot be delegated to other officials.¹³

The impact of not involving notaries in the IUP creation or application process is the rise in the use of Land Certificates (SKTs), which are used as the basis for transactions with companies in land sales and purchases. Consequently, the SKT cannot be used as strong evidence that the transfer of rights is legally valid.

¹²Rahmat Solehan, "Peran Notaris Dalam Memberikan Pemahaman Hukum Kepada Masyarakat Yang Kurang Mampu Dalam Memahami Hukum Kaitannya Dalam Pembuatan Akta-Akta Notariil Di Wilayah Kedu Selatan", *Jurnal Akta*, Vol. 4, No. 1, March 2017, p. 14. Url: <https://jurnal.unissula.ac.id/index.php/akta/article/view/1553>

¹³Tahta Fortuna Maharani Wijaya & Ery Agus Priyono, "Penerapan Asas Profesionalitas Pada Notaris Dalam Pembuatan Akta Autentik", *Jurnal Lex Renaissance*, Vol. 9, No. 2, November 2024, p. 230. Url: <https://journal.uui.ac.id/Lex-Renaissance/article/view/34370>

Conceptually and legally, a Certificate of Land Title (SKT) holds a position in the Indonesian land law system as a private deed that serves as a guide in the land registration process. Although the certificate is recognized as proof of legal land rights by the Basic Agrarian Law (UUPA), the SKT can be valid evidence if it can be physically and legally proven, but the possibility of cancellation by the Court still exists. The SKT is issued by the Village/Kelurahan Office and signed by the Village/Kelurahan Head as the PPATS authorized by the Government. Therefore, the SKT provides strong legal certainty provided it meets the legal criteria in a state governed by the rule of law.¹⁴

A SKT (Sub-Title Certificate) is merely a document confirming the physical control of land held by the community and is not legally binding as proof of land ownership. However, it can be used as evidence in court. It is also included among the documents categorized as legal title or legal data required for land registration, as stipulated in Government Regulation Number 24 of 1997 concerning Land Registration (PP Land Registration).¹⁵

4. Conclusion

Based on the discussion above, it can be concluded as follows: First, theoretically, the position of the SKT is a weak evidence, because it was made underhand without going through the legalization process by a Notary, considering that only a Notary can issue an authentic deed. Second, there is a gap between theory and practice, with the reason that in practice judges often disregard authentic deeds in adjudicating land dispute cases. This can be seen in Decision Number: 24/G/2014/PTUN.KDI and Decision Number: 27/G/2016. PTUN.KDI. Based on the description of the conclusions above, the author provides the following suggestions: First, for the DPR & President to revise Law No. 5 of 1960 concerning Basic Agrarian Regulations, in the section on proof of land ownership as long as it does not have an authentic deed must be declared null and void, in order to end the dualism of SKT & Certificate. Second, for the Ministry of ATR BPN, it is necessary to create a program in collaboration with the South Konawe Regency Land Office, related to ensuring that all communities participate in the PTSL program. Third, for further researchers, this research still has weaknesses in the aspect of empirical studies for district samples so that random or qualitatively correct sampling needs to be added to 5-7 districts in Indonesia. Therefore, further research is needed that examines the theoretical and practical aspects in depth.

¹⁴ Noor Atikah, "Kedudukan Surat Keterangan Tanah sebagai Bukti Kepemilikan Hak Atas Tanah dalam Sistem Hukum Pertanahan Indonesia", *Notary Law Journal*, Vol. 1, No. 3, July 2022. Url: <https://notarylaw.journal.ulm.ac.id/index.php/nolaj/article/view/29>

¹⁵ Khalisha & Sastro, Kedudukan Hukum Surat Keterangan Tanah Yang Dikeluarkan Oleh Geuchik Atas Hak Guna Usaha, *Jurnal Fakultas Hukum Universitas Malikussaleh*, Vol. 11, No. 2, November 2023, p. 439-456. Url: <https://ojs.unimal.ac.id/suloh/article/view/13054>

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