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Submission date: 15-Mar-2023 01:33PM (UTC+0700)

Submission ID: 2037616323

File name: Legal_Development.pdf (685.38K)

Word count: 6927

Character count: 38446



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Article Information

Submitted : December 10, 2021

Reviewed : February 20, 2022

Revised : May 25, 2022

Accepted : July 14, 2022

Keywords: electronic certificate; encumbrance right; validity

DoI: 10.20961/yustisia.v11i2.61111

Abstract

The Indonesian Minister of Agrarian Affairs made a breakthrough through the implementation of electronic encumbrance right. It aims to improve services in the land sector and to support the Government in the realization of a digital bureaucracy in Indonesia. This study is intended to examine validity and implementation of electronic encumbrance right certificates. The findings show that the electronic encumbrance right certificate cannot be separated from the Law on Electronic Information and Transactions. The law lays out requirements for the validity of electronic certificate and their status as evidence in court. Authentication process is different from acknowledgement of electronic data. If the electronic data or documents are legally recognized, the authentication process of the data will automatically legal. The authentication process is a matter of technology; while the acknowledgement of electronic data involves formal recognition based on laws and regulations. Electronic evidence that consists of electronic information or electronic documents or the printouts produced by the electronic system is legal evidence. On the other hand, if the electronic information is not generated through the electronic system, the evidence cannot be considered valid automatically. Electronic information can be electronic evidence if the authenticity, accuracy, and integrity have been verified through an information technology forensic audit.

I. Introduction

Public needs to have credit facilities to carry out their activities, both as consumers and business actors. It is a logical consequence of the rapid pace of activities in the fields of trade, industry, companies, and various activities to support community participation in Indonesia's national development. In the provision of credit, debtors require protection for the security of the capital provided and legal certainty in debt payment. Therefore,

legal guarantee provides confidence that debtor will fulfill obligation to repay capital and determined interest on time.

Indonesia recognizes some types of guarantees. One of them is mortgage rights. Mortgage rights are charged to land as a debtor's guarantee. Harsono states that mortgage is the control of land rights, which includes the authority for creditors to do something to the land that is used as collateral. However, the land is not to be physically controlled and used. Creditor can sell the land if debtor breaks contract; and can take from the proceeds wholly or in part the debt (Sgambati, 2016). clearly, the creditor does not own mortgage object. The mortgage object can only be sold in an auction. The proceeds can be used to pay off the debt to the creditor. If there is a remainder from the sale proceeds, the remainder is returned to the debtor (Febrianto and Ayunda, 2020). To be able to make a sale of the object of the mortgage, the creditor must have proof of the mortgage's existence issued by the Land Office in the form of a mortgage certificate containing the *irrah-irrah* with the words "*Demi Keadilan Berdasarkan KeTuhanan Yang Maha Esa*" (for the sake of justice, in the name of the one and only god) (Putriyanti, 2017).

The *irrah-irrah* has the same executorial power as a court decision with permanent legal force and is valid as a substitute for the *grosse acte hypotheek* to that extent as it concerns land rights (Markum, Widhiyanti, and Widiarto, 2021). Thus, mortgage prioritizes creditor holding the mortgage rights to other creditors and ensures that the creditor's capital or financing can be repaid from the sale of the mortgage object in an auction procedure. Therefore, the registration of mortgage rights and mortgage certificates, as evidence of the imposition of mortgage rights on a particular land, becomes very important, especially for the interests of creditors.

Following the issuance of the Regulation of the Minister of Agrarian and Spatial Planning Number 9 of 2019 Number 9 on Electronic Integrated Mortgage Services, people recognize electronic mortgage certificate. Subsequently, it was revised by the issuance of the Regulation of the Minister of Agrarian and Spatial Planning Number 5 of 2020 on Electronic Integrated Mortgage Services. The regulation covers the existence of electronic mortgage certificate in the form of electronic document.

The technological advances and the increasingly rapid and sophisticated internet network bring a very significant impact on daily human activities. It includes transactions, which can be carried out electronically now. The economic, social, and cultural ecosystem demands industry 4.0. to become the foundation for the Ministry of Agrarian and Spatial Planning/the National Land Agency (BPN -*Badan Pertahanan Nasional*) to adjust the services with digital implementation. The ministry has tried to make a breakthrough by developing and creating electronic-based land services. It contains the electronic mortgage service.

The application of electronic-based land services can also be found in other states, such as South Korea, Australia, Turkey, Malaysia, New Zealand, and Singapore. They have implemented digital services and electronic land certificates (Ardani, 2022). In South

Korea, land certificates has been digitized since 1998 by an agency called the Korea Land Information System. The agency is in charge of the duplication and consistency of land data (Byamugisha, 2021). In contrast to South Korea, New Zealand has implemented electronic land certificates since 1996 through a land data platform. The public can access the data that includes maps and topographic data, as well as conducting e-dealing for land transactions online. Malaysia is currently initiating an electronic certificate program. The program has started the process of digitizing land data since 2018. The application of land digitization in Malaysia triggers the emergence of several applications, such as e-Tanah, e-Kadaster, and MyGeoName (Silviana, 2021).

In the middle of the development, Indonesia also tries to enhance and develop the land services. Indonesia land services has implemented technology applications to ensure speed, security, and transparency (Benchoufi, Porcher and Ravaud, 2017). Some electronic services related to land registration include mortgage rights, land value zone information¹, and land-certificate checking. The electronic mortgage service is expected to better guarantee legal certainty, as well as to provide legal protection, especially to creditors (Pranatia, 2021). Mortgages is about modern credit activities that provides protection and special status to certain creditors. The privileges include the creditor's right to sell certain assets in auction. It is designated explicitly as collateral. Creditors can also take repayment of receivables from the sale proceeds following any debtor's defaults. For the purpose, the creditor holding the mortgage has the right to precede other creditors.

The development of the technology is basically to integrate services from the previously conventional system to a digital one. It surely requires an improvement in the service quality. Digital-based land services can provide security making them more trusted for the public. Electronic-based land services have also been implemented in other states. South Korea, Australia, Turkey, Malaysia, New Zealand, and Singapore have implemented digital services containing electronic land certificates. In South Korea, the digitalization of land certificates has been practiced since 1998 by an agency called the Korea Land Information System. The agency has the authority to duplicate and to check land-data consistency. New Zealand has implemented electronic land certificates since 1996 through a land data platform. The public can access the data that includes maps and topographic data, as well as conducting e-dealing for land transactions online. Malaysia is currently initiating an electronic certificate program. The program has started the process of digitizing land data since 2018. The application of land digitization in Malaysia triggers the emergence of several applications, such as e-Tanah, e-Kadaster, and MyGeoName.

With the existence of electronic mortgage services and the issuance of electronic Mortgage certificates, the evidence² of mortgage, which plays an essential role in the Mortgage guarantee institution, is in the form of an electronic document. It is certainly different in nature and characteristics from conventional documents (Buchak, Matvos,

[Piskorski and Seru, 2018](#)). Therefore, it is necessary to study the use and validity. This study focuses on electronic mortgage certificate regulations and validity, including the issue of recognition of electronic document data as evidence.

This study is a normative juridical study. It used secondary data as ready-to-use library data. The materials of the study consisted of primary legal materials in the form of legislation; and secondary legal materials in the form of legal and non-legal materials. The study employed a statutory approach concentrating on the regulations governing mortgages, particularly the electronic mortgage service.

This section provides and discusses the result of the study. It consists of four parts: (1) definition and legal basis of the mortgage in Indonesia, (2) electronic liability rights certificate, (3) the legality of electronic certificates in Indonesia, and (4) validity of electronic mortgage certificate as evidence.

II. Definition and Legal Basis of Mortgage in Indonesia

The term guarantee law comes from the translation of *zekerheidsstelling* or security. It is the whole of the legal rules governing the legal relationship between the guarantor (the debtor) and the recipient (the creditor) on the imposition of collateral to obtain credit facilities ([Squire, 2011](#)). The legal relationship between the debtor and the recipient of the guarantee reflects that the guarantee law is limited to creditor's rights and debtor's rights related to the guarantee for the debt settlement.

One form of the existence of this guarantee law is the security right to land or often called the mortgage right. At first, land security right were only known in Western or European land law, the *Burgerlijk Wetboek* (BW) of the Indonesian Civil Code, Book H on Land Security Rights through Mortgages ([Wijaya, Firmansyah, and Sylvana, 2021](#)). In the Law Number 5 of 1960 on Basic Regulations on Agrarian Principles, the Indonesian Government regulates several articles related to forms of land-rights guarantee, namely in the form of mortgage rights. The previous laws and regulations are deemed no longer appropriate to accommodate the implementation of the mortgage rights.

The development encouraged the Government to create a newly legal product to regulate mortgage rights. The Government has at least four urgencies to form a law that regulates Mortgage Rights. First, it can give priority or prior position to the holder. Second, it follows the object that is pledged in the hands of whomever the object is. Third, it fulfil the principles of specialty and publicity with the purpose of binding third parties and providing legal certainty to interested parties. Fourth, it is easy and definite execution ([Flesher Fominaya, 2015](#)). Therefore, legislators comprehensively created the Law Number 4 of 1996 on Mortgage Rights on Land and Objects Related to Land. Article 1 Number 1 of the Law mentions that Mortgage Rights are security rights imposed on land rights as referred to in the Law Number 5 of 1960 on Basic Regulations of Agrarian Principles, whether or not following the objects: other objects that are an integral part of

the land, for the settlement of certain debts, which give priority to certain creditors over other creditors (Zhuo, Ma, Lemmen, and Bennett, 2015).

Sutarno simply explains the purpose of mortgage is to provide a sense of security to creditor because creditor is in a position that takes precedence over other creditors. It means that if debtor is unable to fulfill obligations or in default, the creditor holding the mortgage has the right to sell the collateral in a public auction according to the provisions of the legislation (Anggraeny, Fauzia, Esfandiari, Hidayah, Al-Fatih, and Ayu, 2021). However, the privilege is excluded in terms of receivables. According to the applicable laws and regulations, it must be prioritized. There are five elements of the mortgage. First, it is a guarantee for the repayment of certain debts. The mortgage can settle and resolve the payment of debt in the event of a breach of contract. The object of guarantee of mortgage right can be sold for that purpose. Second, it can be used as collateral imposed on land. tenure rights can be granted explicitly to creditor. The creditor has the authority to sell the land designated explicitly as collateral for receivables if the debtor is in default. Third, the object of mortgage is the right to land as regulated in the laws and regulations. Fourth, mortgage can be imposed on the land (land rights) only. However, it can also be charged to other objects that are an integral part of the land to which the mortgage is charged. Fifth, it prioritizes creditor with the mortgage rights than other Creditors.

One of the elements states that the object of mortgage is the right to land as regulated in the laws and regulations. However, not every land can be used as collateral for debt with Mortgage Rights" (Wardhana, Susilowati, and Perwitasari, 2020). It requires several conditions to make it collateral. First, it can be valued in money. Second, it fulfills publicity requirements or includes rights listed in the general register. Third, it has a transferable nature. Fourth, it requires legalization.

Mortgage rights can also be imposed on land rights, including buildings, plants, and existing or future works that are an integral part of the land and belong to the holder of land rights whose burden is expressly stated in the deed –granting of the related mortgage (Zainuddin and Ramadhani, 2021). However, if the right holder does not own building, plant, and work in question, the encumbrance of the mortgage on these objects can only be carried out by signing and in the deed of granting the mortgage concerned by the owner or the authorized person with an authentic deed.

Based on the explanation above, the natures of the mortgage are as follows.

A. Mortgage cannot be divided

Article 2 of the Law on Mortgage clearly states that mortgage has the nature of being indivisible unless it is agreed upon in the deed of granting mortgage (Soeprijadi, 2020). If the mortgage is assigned to several land right then the guaranteed debt can be paid off in installments with the amount equal to the value of each land right, which is part of the object of the mortgage. Thus, the mortgage will only burden the remaining objects to guarantee the remaining outstanding debt.

B. The mortgage is an accessory agreement.

A debt agreement must precede every guarantee agreement. In practice, “to make a guarantee agreement, the main agreement is stated about the promises regarding the guarantee used as the source for the guarantee agreement issuance as an accessory agreement” (Xiang and Buckley, 2003).

III. Certificate of Electronic Liability Rights

Article 13 and 14 of the Mortgage Law regulate conventional mortgage registration (Djadjakustio, 2020) as follows.

- A. Registration is performed at the land office.
- B. Within seven days after the signing of the Deed of Granting Mortgage Rights, the Land Deed Making Officer must send the relevant Deed of Granting Mortgage Rights and other documents required to the Land Office.
- C. The Land Office then makes a Mortgage Land Book and records it in the Land Title Book, which contains the object of the Mortgage Rights, and copies the notes on the relevant Land Rights Certificate.
- D. The mortgage is existed since the date when the mortgage land book is made. In this case, the date of the Mortgage Land book is the seventh day after the complete receipt of the documents required for registration.

As proof of the existence of a Mortgage Right, the Land Office issues a Mortgage Certificate following the applicable laws and regulations.

However, the Regulation of the Minister of Agrarian and Spatial Planning Number 5 of 2020 mentions that services related to mortgages can be in electronic to improve and fulfill the principles of openness, timeliness, speed, convenience, and affordability for public service. Article 1 Number 7 of the same Regulation stipulates (Taufan and Salim, 2021) that Electronic Integrated Mortgage Service is a series of mortgage service processes in the maintenance of land registration data, which is carried out through an integrated electronic system.

Subsequently, Article 6 paragraph (1) of the Regulation determines the type of electronic mortgage service that can be submitted through the electronic mortgage system. it consists of (1) registration of mortgage, (2) transfer of mortgage rights, (3) change in the name of the creditor, (4) the abolition of mortgage rights, and (5) data improvement (Wardhana, Susilowati, and Perwitasari, 2020). The output of the electronic mortgage service is the electronic mortgage certificate given to the creditor as the mortgage recipient.

Electronic mortgage certificate cannot be separated from electronic land certificates in general. Firstly, it can be understood that the land registration process is generally carried out in three stages: measurement, mapping, and bookkeeping. In the last stage, the bookkeeping, one of the most important documents or archives is issued after the

transaction in the land sector. It is land certificates. A land certificate is a written or printed sign or statement issued by an authorized agency that can be used as evidence of a land ownership certificate (Christensen, 2004). Therefore, in simple terms, a land certificate is an evidence issued by a competent authority. In this case, it is the BPN, in the form of a letter or printed paper. It is given to a person who has rights to a plot of land.

The Indonesian Government also enforces the existence of electronic-based land certificates to achieve the modernization of land services and to optimize the use of existing technology. It is regulated in the Government Regulation Number 18 of 2021 on Management Rights, Land Rights, Flat Units, and Land Registration (Zakaria, 2022). Article 84 paragraphs (1), (2), and (3) of the Regulation explain the following matters.

- A. Implementation and completion of land registration can be done through an electronic system.
- B. The results of the implementation and completion of electronic land registration as referred to above are in the form of data, electronic information, and electronic documents.
- C. Electronic data and information and the printed results generated from the service are legal evidences.

The implementation of the electronic system of land registration and use, related to land certificate, can provide legal certainty for the community. The Regulation of the Minister of Agrarian and Spatial Planning/the Head of the National Land Agency Number 1 of 2021 on Electronic Certificates regulates the matters (Suyanto, 2021). There are several backgrounds for the creation of electronic land certificates: (1) increasing the efficiency and transparency of land registration; (2) more secure management of land archives and certificates; (3) increasing the value of registering property to improve the rating of the ease of doing business in Indonesia; and (4) removing the requirement for people to come to the land office. Therefore, an electronic mortgage certificate is part of the modernization of land services, related to electronic land certificates in general.

IV. The legality of Electronic Certificates in Indonesia

In the current digital era, it has become possible for all documents, that are usually on papers, to be turned into electronic documents. Since the enactment of the Law Number 11 of 2008 on the Electronic Information and Transactions as amended by the Law Number 19 of 2016, one of the documents allowed to be converted into electronic media is an electronic certificate (Aditya, Wulandari, and Loso, 2022). Article 1 Number 9 of the Law states that electronic certificates are electronic certificates that contains electronic signatures and identities that indicate the status of the legal subjects of the parties in electronic transactions issued by the electronic certification operator.

Therefore, an electronic signature is one of the essential elements in an electronic certificate. Article 1 Number (12) of the Law on Electronic Information and Transactions

states that electronic signature is a signature consisting of electronic information attached, associated, or related to other electronic information. It is used as a means of verification and authentication (Praptono and Pratama, 2020). Article 60 paragraph (1) of the Government Regulation Number 71 of 2019 on the Implementation of Electronic Systems and Transactions states that electronic signature functions as authentication and verification tools for (1) signatory's identity; and 2) integrity and authenticity of electronic information (Budrez, 2007).

An electronic certificate cannot immediately be used as evidence if the electronic signature does not have legal force and legal consequences as stipulated in Article 59 paragraph (3) of the Regulation on Electronic Systems and Transactions. Therefore, the electronic signature must fulfill the following requirements to be valid. In turn, it can be used to sign electronic certificates.

- A. The electronic signature creation data is related only to the relevant or interested signatories.
- B. The electronic signature creation data at the time of the signing process is only in the power of the signatories.
- C. Any changes to the electronic signature that occur after the time of signing can be noticed.
- D. Any changes to the electronic information related to the electronic signature or signed by the electronic signature after the time of signing can be known.
- E. There are specific methods used to identify who the signatories are.
- F. There are specific ways to show that the signatories have consented to the electronic information (Seth, 2021).

In nature, public concerns arise when the electronic land certificate is enforced, especially regarding its security. Therefore, efforts are needed to fulfill the requirements for the security of electronic devices to ensure the security of electronic certificate services by the Ministry of Agrarian Affairs and Spatial Planning/the National Land Agency (Fhonna, Mutiarin, Saputra, and Latif, 2021). The Ministry of Agrarian and Spatial Planning/ the National Land Agency is essentially trying to design the maximum security of the use of electronic certificates to protect owner through the implemented security system as follows.

- A. The ministry implements standards of the ISO 27001:2013 for information security management systems. It ensures all processes to be carried out based on risk analysis. In addition, the mitigation is carried out according to international best practices.
- B. The ministry uses encryption methods for all data, starting from being stored and transferred to being processed by the ministry's system.
- C. The ministry uses electronic signature as an indication of the identity of the signer of the electronic document and the BSRe logo to inform that the electronic signature uses a Root Certificate Authority (RCA).

- D. The ministry implements 2FA (2 Factor Authentication) to ensure that only the certificate holder can open the digital document.
- E. the storage of ATR/BPN digital data is carried out with an encryption model and regularly backed up in the Data Center and DRC.
- F. Landowner data will adapt to the personal data protection approach. In this case, only specific data can be accessed in general by the public.

V. Validity of Electronic Mortgage Certificate as Evidence

The important thing related to the mortgage certificate is the attached executorial title as the basis for the direct execution of the mortgage object. Article 14, paragraph (3) of the Mortgage Law states that the mortgage certificate as referred to in paragraph (2) has the same executorial power as a court decision that has obtained permanent legal force and is valid as a substitute for a *grosse act* (Hidayat, Husin, and Ulfanora, 2019).

The mortgage certificate contains *irah-irah* with the words “*Demi Keadilan Berdasarkan KeTuhanan Yang Maha Esa*” (for the sake of justice, in the name of the one and only god). This certificate has the same executive power as a court decision with permanent legal force. It shows that, with the existence of this executorial title, when debtor is in breach of contract, creditor as the mortgage holder has the right to execute the object of the mortgage without having to apply for execution to the district court first or without having to go through the litigation process (Monica and Djaja, 2020).

A mortgage certificate is an evidence for creditor to be able to execute the object of the mortgage. If later there is a dispute on the object of the mortgage, the creditor can prove legitimacy as the holder of the mortgage to carry out the execution. electronic mortgage certificate certainly have different characteristics from conventional mortgage certificate, both in terms of form and other characteristics. Problems that can arise in the execution of a mortgage based on the electronic mortgage certificate are related to the status of the electronic mortgage certificate as legal evidence in court (Moechthar and Soelistyowati, 2021). Electronic data is not an easy thing to be understood or operated because the shape does not have a physical form. Imagining electronic data, information, and document structure is often complicated. Changing understanding of electronic data from abstract to concrete is difficult. Therefore, it is also challenging to assess the validity of electronic information evidence and documents (Arshad, Jantan, and Abiodun, 2018). The difficulty is also found to the validity of the electronic mortgage certificate as evidence.

The Regulation of the Minister of Agrarian and Spatial Planning Number 5 of 2020 regulates the electronic service of mortgages. In addition, The Regulation of the Minister of Agrarian and Spatial Planning Number 1 of 2021 regulates electronic certificates. They are applied as the realization of progress for the needs of state administration. The electronic mortgage certificate can be mortgage existence evidence on a collateral

object and prove the granting of the mortgage from debtor to creditor. Thus, the electronic mortgage certificate can be a valid basis for executing an object of mortgage. However, the use of electronic mortgage certificates as evidence in court must wait for the development of evidence as regulated in the Law on Electronic Information and Transactions (Rohaini, Nu'man, Heniarti, and Ruhaeni, 2022).

Indeed, Article 82 paragraph (4) of the Government Regulation Number 18 of 2021 clearly states that electronic data and information and their printed results as referred to in paragraph (3) are an extension of legal evidence following the procedural law applicable in Indonesia (Nurkholim, 2020). However, the article only regulates registered land certificate. It does not include mortgage guarantee certificate. There is a need for statutory provisions, or the Supreme Court's judgement, which clearly states the mortgage certificate and information technology in providing land services for the community as legal evidence in court.

As described above, the issue of electronic mortgage certificates is not a new thing in the world's land registration system because other states have implemented it first. It includes the strength of the evidence before the trial. For this matter, Australia, Chile, China, Japan, and Singapore provide a firm acknowledgment that electronic data is recognized as legal evidence in courts. It is regulated in material law (content) and formal law (procedural techniques using electronic data evidence in courts) (Noor, 2021; Prayuti, Anggraeni and Amalia, 2019).

The electronic data recognition has become an interesting issue along with the use of information technology (internet). Australia, Chile, China, Japan and Singapore have legal regulations that provide recognition of electronic data as valid evidence in court. China, for example, has special regulations to recognize electronic data. An article of the law on contract of the People's Republic of China 1999 states that the written evidence is recognized as evidence in the implementation of contracts (agreements). They include letters and text data in various forms, such as telegrams, telex, facsimile, and e-mail.

In business practice, electronic document is a consequence of technological developments. The United States has recognized electronic documents produced in business practices. Since January 2001, the Division of Computer Crimes and Intellectual Rights of the American Department of Justice has made special policies related to the recognition of electronic documents as legal evidence in court. If a business practice uses electronic devices (computers) in business activities, there is no one reason to equalize the original writing. The scope is so extensive, such as approval, recording, and compilation of data in various forms. It also includes laws, opinions, and diagnoses produced at the time of the transaction were made or produced through information exchange using a computer.

All of the evidences are legally recognized based on the opinion (information) of an expert or custodian (in the capital market). The document can also be recognized without any information, if, previously, there is a certification of the business method.

The method is called a recognition based on the ability of a computer to store data. This recognition is often used in business and non-business practices to equalize electronic documents with conventional documents. The second way to recognize electronic documents is to rely on the final results of the computer system. For example, with the output of a computer program, results are not preceded by physical interference. It covers logs in the internet, telephone recordings, and ATM transactions. In nature, the electronic evidence is recognized as electronic evidence and has legal force. Unless otherwise proven, the data can be neglected.

The last is the combination of the two methods above. Some electronic data is produced by the output of a computer system and the process of computer storage. In this context, an electronic document can be an issue if it contains a combination of two methods. Actually, there is one thing to consider in the recognition of an electronic data. It covers the extent of the security of a system and involvement of people with the computer system. Usually, crime that uses a computer (internet) involves insiders.

In business practice, the existence of electronic documents is inevitable. Export and import transactions (between countries) have already used EDI (Electronic Data Interchange). Almost all states of the world use and receive a transaction carried out using EDI. Indonesia has been using EDI technology since 1967 up to the present. Strangely, the court has not received the electronic evidence as legal evidence. In this context, Indonesia cannot be considered as left behind in using electronic data as transaction evidence.

The internet has made a kind of blurring of electronic data recognition for transactions. People make an issue, whether the data can be accounted for before the law. In fact, based on the essence of the electronic transaction, as long as the parties do not mind the prerequisites in the agreement, all evidence of the transaction has the same standing with conventional transaction documents.

In the APEC meeting, Bangkok, 2000, Some Asian states (Indonesia did not participate) discussed the status of electronic documents and authentication methods for documents resulting from the computing process. Most states agreed to form special provisions to adopt technological developments. However, these states do not rely on the existence of technology. It is possible to use more than one technology to authenticate electronic documents. The problem of authentication is a different problem from the recognition of electronic data. If the data or electronic documents are accepted or recognized legally, the authentication process of the data will also be recognized. The problem is that the discussion of the validity of electronic documents is too early, while there is still a discussion of authentication method. The authentication process is a technological issue; while the recognition of electronic documents concerns formal recognition in statutory regulations.

Based on the division of the types of electronic evidence, the verification procedure for electronic evidence can be divided into two as follows.

A. Verification of electronic evidence generated from an electronic system

Valid electronic evidence, according to the Law on the Electronic Information and Transaction, requires the verification of information or electronic documents produced through an electronic system to be carried out by confirming the registration of electronic systems that produce information or electronic documents.

B. Verification of electronic evidence not generated from an electronic system

Based on Article 5 paragraph (3) of the Law on the Electronic Information and Transaction, an evidence that is not produced through an electronic system does not automatically become a valid electronic evidence. It can be an electronic evidence if its authenticity and accuracy has verified it through an information technology forensic audit. With an information technology forensic audit, an information or electronic document has the status as legal evidence. As for information or electronic documents that are not obtained through an electronic system and an information technology, forensic audit is not conducted. The information or electronic documents cannot be categorized as electronic evidence with the status of legal evidence.

VI. Conclusion

Electronic Mortgage Services, as regulated in the Regulation of the Minister of Agrarian and Spatial Planning Number 5 of 2020, is an effort to advance the state administration system to be faster and more efficient, resulting in an electronic mortgage certificate as evidence of mortgage on a guarantee object. The implementation of electronic mortgage object can still be carried out based on the executorial title. The validity of the electronic mortgage certificate can be determined by complying with the benchmarks and requirements in accordance to the laws and regulations on mortgage and the Law on Electronic Information and Transactions and its derivative regulations. In addition, it is also necessary to renew the laws and the regulations that confirm electronic mortgage certificates and the use of information technology to provide land services for the community as legal evidence in court.

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