



Community Legal Protection and the Legal Position of Electronic Land Certificate in Land Registration Based on Notarial Assets

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Abstract

The electronic land certificate (e-certificate) policy is supported by the presence of the Regulation of the Minister of Agrarian Affairs and Spatial Land/Head of the National Land Agency Number 1 of 2021 concerning Electronic Certificates (Permen ATR / BPN 1-2021). In the future, everyone who makes a property transaction for the first time will no longer hold a physical certificate. Everything is digital for those who have paper certificates, the government is obliged to immediately switch to electronic. Including when the process of buying and selling property assets occurs. There are indeed concerns about the birth of this new policy. The public does not fully believe in the security of the digital world. Especially for land certificates. Many parents are still conventional, lagging behind technological developments. They still believe in maintaining physical land certificates. Efficient land registration, legal certainty and legal protection, reduce the number of disputes, conflicts and court cases regarding land and increase the value of registering property in order to improve the Ease of Doing Business (EoDB) ranking. The implementation of electronic land certificates will also be gradual considering the large number of land parcels in Indonesia. Then in accordance with the very diverse geographical conditions and the socio-economic conditions of a pluralistic society. Security can also be guaranteed because the entire information security process uses encryption technology such as cryptography by the National Cyber and Crypto Agency.

Keywords: *Protection; Certificate; Notarial*

Introduction

The electronic land certificate (e-certificate) policy is supported by the presence of the Regulation of the Minister of Agrarian Affairs and Spatial Land / Head of the National Land Agency Number 1 of 2021 concerning Electronic Certificates (Permen ATR / BPN 1-2021). In the future, everyone who makes a property transaction for the first time will no longer hold a physical certificate. Everything is digital for those who have paper certificates, the government is obliged to immediately switch to electronic. Including when the process of buying and selling property assets occurs. There are indeed concerns about the birth of this new policy. The public does not fully believe in the security of the digital world.(1)

Especially for land certificates. Many parents are still conventional, lagging behind technological developments. They still believe in maintaining physical land certificates.(2)

Some of the problems encountered when using e-certificates include *first* the implementation of this digitization starting from government land and business entities. The certificate is withdrawn, then validated and stored in an electronic file system. The electronic certificate can be printed anywhere by the owner when needed. How is the validation process carried out, it's unilaterally carried out by BPN, applicants from government institutions, and business entities. The conflict should have been resolved first, separated from the claims of the government and business entities."This kind of process has the potential to exacerbate agrarian conflicts, strengthen inequality and land monopolies by private and state enterprises".

Second, the people have the right to keep the original certificate and this right cannot be deleted. The electronic certificate should be complementary and for the purpose of facilitating the land database in the Ministry of ATR. Digitalization doesn't replace people's rights to original certificates.

Third, the information and technology or digital systems managed by the Ministry of ATR / BPN aren't secure with a questionable level of security and without bureaucratic reform, they are very vulnerable to being misused, even pirated. Fourth, on the user side that the digitization system will only be friendly to urban communities and the upper middle class who can access adequate technology and infrastructure, but what about the poor in cities, villages, sub-districts, villages, and disadvantaged areas will have difficulty accessing the system technology that is so fast.(3)

Fifth, from the perspective of agrarian political orientation, especially land, the priority of work in land certification, including this digitization program, shows that the land system is increasingly being oriented towards the interests of liberalizing the land market in Indonesia. Land certification without prior *land reform and agrarian reform* will only legitimize land monopoly by large-scale business entities.

Departing from the foregoing, it's necessary to have legal protection for the community and Notary / Land Deed Making Official (PPAT) in providing facilities to make land deeds notarized, so that in the end it provides comfort and security for conducting electronic land registration.(4) This becomes a social problem whether security is guaranteed, when the position of the e-certificate at the legal level is an electronic land certificate regulated in Law of the Republic of Indonesia Number 11 of 2020 concerning Work Creation (Law No.11-2020).

Research Method

The type of research used in this research is normative legal research.(5) By using primary and secondary legal materials, along with tertiary legal materials as supporting materials.(6)

Discussion

The Legal Position of Electronic Land Certificates in Land Registration Based on Notarial Deeds

In Indonesia there is a system of hand in hand, meaning that there is no extreme separation between registration of rights and registration of deeds. At this level, rights are registered with the deed intermediary. Deeds are used as a formal requirement for registration of transfer of land rights, to obtain a certificate as proof of rights.(7)

Article 37 paragraph (1) Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration (PP No. 24-1997) "transfer of land rights and ownership rights to Apartment Units through sale and purchase, exchange, grants, income in companies and Other legal acts of transfer of rights,(8) except the transfer of rights through an auction, can only be registered if it is proven by a deed made by the authorized PPAT according to the provisions of the prevailing laws and regulations ". Then in Article 103 paragraph (2) letter c PMNA / KBPN No. 3 of 1997, it was determined that the deed made by the Notary / PPAT is one of the documents required for registration of the transfer of land rights. Notary Deed / PPAT is one of the main data sources for maintaining land registration data.(9).

The Notary Deed / PPAT can be categorized as a letter of submission, because moving from Subekti's opinion, the PPAT deed is evidence that it is true that legal action regarding land rights in the form of real handover (*feitelijke levering*).⁽¹⁰⁾ If you see this, the researcher is of the opinion whereas the position of a deed in an e-land certificate is the same as a certificate that is conventional in nature, because a legal act arises in an agreement or engagement between the debtor and creditor regarding the actual delivery of land rights registration.

Public Legal Protection of Electronic Land Certificate in Land Registration Based on Notarial Deed

Electronic certificates are for efficient land registration, legal certainty and legal protection, reduce the number of disputes, conflicts and court cases regarding land and increase the value of *registering property* in order to improve the *Ease of Doing Business (EoDB)* ranking. Security can also be guaranteed because the entire information security process uses encryption technology such as cryptography by the National Cyber and Crypto Agency.⁽¹¹⁾

Electronic land registration culminates in the issuance of proof of ownership of land rights in electronic form. As stated in Article 147 of Law no. 11-2020 that "*Evidence of land rights, ownership rights to apartment units, management rights, and security rights, including deeds of transfer of land rights and other documents relating to land can be in electronic form*". Not to mention the issue from the security side. According to him, this aspect isn't guaranteed so that it has the potential to lose data on the people who own the land. This digitalization system with an unsecured level of security and without bureaucratic reform is very vulnerable to being misused and even hijacked.⁽¹²⁾ From the user side, digitalization will only be friendly to urban communities and the upper middle class, where access to technology and infrastructure has been built. On the other hand, the poor in urban, rural, and rural areas will be left behind.⁽¹³⁾

BPN will examine the various documents. Once approved, land that has been assigned rights must be registered in an electronic system in order to issue an electronic certificate. Later, the owner will get a certificate and access to an electronic land certificate in the electronic system. Neither will be published if the physical data is incomplete or the land is still disputed. Meanwhile, people who previously have land certificates and want to convert them to electronic devices need to apply for land registration data maintenance services to the Ministry of ATR / BPN.

The condition is that the physical and juridical data in the land book that is owned is in accordance with the data in the electronic system. Later, the BPN will validate the registrant's land. Validation is carried out on data of rights holders, physical data, and juridical data. If it's appropriate, an electronic land certificate will be issued and the land book will be with drawn. The evidentiary power inherent in electronic evidence, by the Law of the Republic of Indonesia Number 11 of 2008 concerning Electronic Information and Transactions which states that electronic documents are equated with documents made on paper. It can be thought that the power of proof of electronic documents in civil case practice is equated with the strength of written evidence (letters).⁽¹⁴⁾

The printed result of an electronic land certificate(15) in the form of an electronic document has legal certainty that is able to protect the public from legal action, because electronic documents are an extension of evidence which has the same evidentiary power as documentary evidence. Electronic documents are an extension of evidence from technological developments. The current regulations on electronic evidence have provided legal protection for the parties involved in it.

Conclusion

Efficient land registration, legal certainty and legal protection, reduce the number of disputes, conflicts and court cases regarding land and increase the value of *registering property* in order to improve the *Ease of Doing Business (EoDB)* ranking. The implementation of electronic land certificates will also be gradual considering the large number of land parcels in Indonesia. Then in accordance with the very diverse geographical conditions and the socio-economic conditions of a pluralistic society. Security can also be guaranteed because the entire information security process uses encryption technology such as cryptography by the National Cyber and Crypto Agency.

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