



Legal Protection of Electronic Land Certificates in the Legal System of Land Registration in Indonesia

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Abstract

Land as one of the natural resources and one of the gifts of God Almighty. Humans live and multiply and carry out activities on the ground, so that every human being is in contact with the land. Therefore, the relationship between humans and land cannot be separated, because land also has economic, political, social and cultural functions in human life. The relationship between man and the land has become essential. Law Number 5 of 1960 is the Juridical Foundation for the regulation of Agrarian Law in Indonesia, especially Land. Where the content provides basic rules on how legal obligations for holders of land rights. The purpose of the establishment of the UUPA it self is to lay the foundations for unity in land law and provide legal certainty regarding land rights for all Indonesian people. Issuance of electronic certificate rules according to the government, as a form of government effort to resolve disputes over ownership of land rights. The purpose of electronic issuance of land certificates is for the efficiency and transparency of land registration; management of archives and land warrants will be more guaranteed.

Keywords: *Land; People; Electronics*

Introduction

Land becomes a habitat for all living things in this world, especially humans who use it as a place to live. In addition to being a natural resource and God's grace, land has a major role in human life whose economic resources depend on land such as plantations, agriculture and other activities. However, the availability of land is limited even though the number of humans continues to grow.

Human activities, including reproduction and daily activities, occur above the ground, making man's relationship with the land inseparable. The function of land is not only limited to aspects of life, but also affects the economic, political, social, and cultural fields. This relationship continues to develop as culture changes, especially due to social, political, and economic factors.

Therefore, land management needs to be carefully planned, considering various factors. Land has a key role in state development and people's welfare, as well as to maintain the integrity of the Unitary

State of the Republic of Indonesia (NKRI). Legal protection from the government is needed in terms of ownership, use, and utilization of land.

The importance of land in human life requires legal certainty regarding ownership and responsibility for land. This lets the holder of land rights know his rights and obligations, as well as allows others to recognize the owner of that right, the type of land, who is on it, and its boundaries. Based on KBBI, the land is:¹

1. The surface of the earth above once
2. The condition of the earth somewhere
3. Delimited surface of the earth
4. The materials of the earth, the earth becomes the material of something (sand, rock, napal and becomes it).

In accordance with Article 33 paragraph (3) of the 1945 Constitution related to National Economy and Social Welfare, "Earth and water and the natural resources contained therein are controlled by the state and used for the prosperity of the people". Then through the passing of Law No. 5 of 1960 UUPA it has laid the foundation for the development of national land law.

Law No. 5 of 1960 became the Juridical Basis for the regulation of Agrarian Law in Indonesia, providing Land, which contains the main rules related to what legal obligations are for holders of land rights. The establishment of UUPA aims to lay the foundations for unity in land law and provide legal certainty related to land rights for all Indonesian people.

The characteristic of land rights is that individuals have the authority to take and utilize the land to which they are entitled. One form of land rights described in Article 16 paragraph (1) of the Basic Agrarian Law (UUPA) is Hak Milik (HM). Regulation and supervision of land ownership rights is needed by a land registration institution known as the National Land Agency (BPN). BPN functions to carry out duties and functions in the land sector in accordance with Presidential Regulation No. 20 of 2015.

In carrying out its duties, BPN has various functions²:

- a. Formulate and establish policies in the land sector.
- b. Set and implement policies in the field of surveying, measurement, and mapping.
- c. Regulate and implement policies in the field of land rights determination, land registration, and community empowerment.
- d. Regulate and implement policies in the field of regulation, structuring, and control of land policies.
- e. Regulate and implement policies in the field of land acquisition.
- f. Regulate and implement policies in the field of control and handling of disputes and land cases.
- g. Supervise the implementation of tasks within BPN.
- h. Carry out task coordination, coaching, and administrative support at organizational units within BPN.
- i. Manage data and information on sustainable agricultural land and information on land sector.
- j. Carry out research and development in the land sector.
- k. Developing human resources in the land sector.

The duties and functions of BPN are cross-sectoral, because BPN coordinates between sectors according to existing problems and aims to ensure the certainty of ownership rights over land, in

¹ Boedi Harsono, Indonesian Agrarian Law: History of the Establishment of the Basic Agrarian Law, Its Content and Implementation, Djambatan Publishers, Jakarta, 2008, p 19

² Presidential Regulation of the Republic of Indonesia No. 20 of 2015

accordance with Law No. 5 of 1960 Article 19 paragraph (1) which stipulates land registration throughout the territory of the Republic of Indonesia to be carried out by the Government in accordance with the provisions regulated by the PP. Article 19 paragraph (2) outlines the registration, including:

- a. Mapping measurement and land bookkeeping
- b. Registration of land rights and transfer of those rights
- c. The provision of a letter of proof of rights, which applies to be a strong evidentiary tool

One of the objectives of the ratification of the UUPA (Law No. 5 of 1960 concerning Basic Agrarian Principles) is to provide legal confidence in land rights for the Indonesian people. Article 19 of the UUPA confirms that this legal confidence will be achieved through land registration covering all parts of Indonesia. Land certificates are the final result of the land registration process and become strong and valid evidence of ownership of land rights.

The certificate becomes evidence that has convincing legal force. This power is a guarantee of legal certainty for certificate holders, as long as no party proves otherwise. However, due to the high value and benefits of land, there are often attempts to forge certificates, either in the form of fake, original but fake, or double, where the information on the certificate does not match the land book records. Such cases are commonplace and result in risks. Certificate forgery is rooted in illegitimate rights, such as certificates issued on the basis of forged owner's letters or using fake BPN stamps, as well as manipulation of land data.

In practice, certificate holders may lose their rights due to claims from other parties that result in the revocation of the certificate due to administrative problems. This kind of administrative problem can result in double certificates because the certificates are not in line with the land registry map or the state of the territory.

Based on AP. Parlindungan, Article 19 of the UUPA shows several things, including related to certificates issued to provide legal certainty and protection for their owners. Then, the role of the land office to be an important center for the community to obtain information related to land is very important. To carry out all aspects related to land, including land rights, regular administration is very important so that all information can be recorded correctly and does not cause losses to the community.³

Several conflicts in the agrarian sector in Indonesia show that there are still non-optimal in land administration, which require future improvements to reduce the possibility of conflict recurrence. Agrarian conflicts often arise because the land registration system used still tends to be inefficient. This system is called registration of negative publications that have a positive tendency. In this system, the government has not been able to fully guarantee legal certainty for certificate owners because the government is not responsible for the accuracy of data and information on certificates. Data is declared correct if no party files an objection or lawsuit against the certificate. Land conflicts in Indonesia often involve unresolved land disputes and land rights.⁴

Based on Article 32 of PP No. 24 of 1997, land certificates can still be changed if there are legal or administrative defects in the issuance process. This shows that people who own land with good intentions still get legal protection.

³ AP. Parlindungan, Land Registration in Indonesia (PP 24 Year 1997), Diktat, 1997, p. 8

⁴ Directorate of Spatial and Land Planning, Bapenas, Study of Preparation for Changes in the Land Registration System Positive Publication in Indonesia, Year 2016, p. 21.

The digital age has changed many aspects of life to be more practical and modern. The development towards the digital age is inevitable. In the land sector, modernization of land services began to apply electronic-based services to produce electronic documents.

In 2021, the Indonesian government launched an electronic land certificate policy through the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of BPN No. 1 Year 2021. Through this regulation, land registration can be electronic, including first-time registration and data maintenance. The results of this electronic registration are such as data, information, and electronic documents containing information on rights holders, physical data, and juridical information related to land. Data from this service will be stored on the Electronic Systems Database.

However, Indonesia is lagging behind in terms of electronic land titles. Technology has enabled faster, easier, and more practical service delivery. The author seeks to find certainty regarding the need for a change towards digitization in land proof documents as well as the functions and benefits of electronic land certificates. A normative juridical approach is used by analyzing various regulatory documents to achieve this goal. Why an electronic land certificate? What is the legal force of electronic land certificates according to the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of BPN No. 1 Year 2021 related to electronic land certificates and what is the position of electronic land certificates in land registration law in Indonesia?

Discussion

1. Electronic Land Certificate

Land plays an important role for humans, from functioning as a place to live to being an asset in the development of the country. Therefore, it is important to have clear arrangements and property rights related to land, so that every party who has land rights understands their rights and obligations. The government continuously and regularly conducts land registration. This implementation began since the issuance of UUPA and PP Law 10 of 1961. The land registration process begins with measuring, mapping, and bookkeeping of the land. Then, land rights and transfer of land rights are registered, and the result in the form of a certificate becomes strong evidence according to Article 19 paragraph 2 of the UUPA. Registration of land rights is considered important to ensure legal certainty and legal protection for land rights holders, as well as prevent interference from unauthorized parties.

Supriadi explained, "Land registration is a very important issue in the UUPA, because it is the first step in proving ownership of land rights. The importance of this is illustrated in the UUPA order on the government to register land throughout Indonesia"⁵. Although the implementation of land registration has not been evenly distributed throughout Indonesia, this has caused physical and juridical data on land to not be fully available.

The government is trying to adopt digital transformation through the Regulation of the Minister of ATR/Head of BPN No. 1 of 2021 related to Electronic Certificates which is effective since 2021. Based on the regulation, an electronic certificate, or e-certificate, is a certificate issued through an Electronic System in the form of an Electronic Document. The issuance of this regulation is considered to be an effort by the government to handle disputes over ownership of land rights.

In Article 1 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of BPN No. 1 Year 2021, "Electronic Systems are a series of electronic devices and procedures that prepare,

⁵ Supriadi, *Agrarian Law*, Sinar Grapika, 2007, p. 152.

collect, process, analyze, store, present, announce, transmit electronic information". Meanwhile, Electronic Documents are defined as electronic information created, transmitted, sent, received, or stored in analog, digital, electromagnetic, optical, or similar forms. This includes writing, sound, images, maps, photographs, letters, numbers, symbols, or perforations that have meaning and can be understood by people who understand them through computers or Electronic Systems.

The implementation of land registration can be done electronically, including:

- a. Land registration for the first time; and
- b. Maintenance of land registration data.

This land registration is carried out through an Electronic System. The implementation of electronic land registration is carried out in stages according to the provisions of the Minister. The results of the electronic land registration process are in the form of Data, Electronic Information, and/or Electronic Documents. This data, electronic information, and/or Electronic Document includes valid rights holder data, physical data, and juridical data related to land and maintains the authenticity of the information. All this Data, information and/or Electronic Documents are archived in the Electronic System Database.

The implementation of Electronic Systems for the implementation of land registration includes:

- a. Data collection;
- b. Data processing; and
- c. Presentation of data.

The results of the implementation of the Electronic System in the form of Electronic Documents, in the form of:

- a. Electronic Documents issued through Electronic Systems; and/or
- b. Existing documents are converted into Electronic Documents.

Electronic Documents issued through Electronic Systems are validated using Electronic Signatures in accordance with the provisions of the Law. And validated by authorized officials and given a digital stamp through the Electronic System.

The printed Electronic Document becomes valid legal evidence and an extension of valid evidence in accordance with the applicable Procedural Law in Indonesia. For evidentiary purposes, Electronic Documents can be accessed via Electronic Systems.

2. The Legal Force of Electronic Land Certificates in Accordance with the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of BPN No. 1 Year 2021 Related to Electronic Land Certificates

The digital transformation process in public services in Indonesia has been running, as seen from the OSS (*Online Single Submission*) feature, online trial (*ecourt*), tax e-filing, electronic fiduciary registration, and the start of Electronic Liability Rights in 2020 in the land sector. This policy from the Ministry of ATR/BPN reflects progress according to the times.

In accordance with the Regulation of the Minister of ATR/Head of BPN No. 1 of 2021 related to "Electronic Certificates" issued in early 2021, this regulation regulates the issuance of electronic land certificates. Issuance is carried out in the process of first-time registration of unregistered land or replacing existing analog certificates into digital form.

Director of Land and Space Registration Regulation, Dwi Purnama, explained that the issuance of electronic land certificates is driven by the objectives of efficiency in land registration, providing legal certainty and protection, and reducing disputes, conflicts, and court cases related to land. This step also contributes to improving the assessment of ease of doing business (EoDB) by increasing the value of registering property. Electronic land registration can increase efficiency in input, process, and output processes, and reduce physical interaction between users and service providers. In addition to efforts to reduce transaction costs in land affairs, this has also proven effective in reducing the impact of the pandemic.⁶

Returning to the purpose of land registration in Indonesia, the aim is to provide legal certainty for land rights (*cadastral rechts*). The ultimate goal of the land registration process is to issue documents as proof of land ownership called certificates. This includes land title certificates, dependent rights certificates, waqf certificates, and flats certificates. The forms of proof of land ownership can vary, such as Leter C / D, Girik, Pipil, SKT, SPPT UN, and others. However, legally recognized proof of ownership of land rights is a certificate resulting from the land registration process. An electronic land certificate is a form of electronic proof of ownership recognized by the ITE Law, especially in Article 6. From a legal point of view, there is no problem in terms of proving Electronic Land Certificates. Its validity is also guaranteed by Article 5 of Regulation of ATR/BPN No. 1 of 2021.

Public concerns related to potential data leaks (*hackers*) have been noticed by BPN in an effort to secure data through cooperation with the State Cyber and Encryption Agency (BSSN). BSSN is a government agency established to maintain cybersecurity effectively and efficiently. BPN also performs other measures, such as storing electronic signatures in multiple servers. All of this shows BPN's good faith to achieve community safety and comfort in ownership and legal protection of land rights.

Regarding the strength of electronic certificates, Law No. 11 of 2008 related to Electronic Information and Transactions (ITE) Article 5 paragraph (2) says electronic certificates are valid proof of ownership in accordance with the applicable procedural law in Indonesia. This makes the electronic certificate included in the category of authentic deeds even though it is in electronic form. Electronic certificates also contain electronic signatures. Although the official definition of signature does not yet exist in Indonesian law, a signature has 2 main functions being the identity of signing and approval of the obligations stated in the deed.

The purpose of the introduction of electronic land titles is to increase efficiency and transparency in the land registration process. It also aims to ensure the management of land records and documents becomes more secure, improving derivatives-related services along with the increase in the number of land registered through PTSL. Electronic certificates also contribute to the modernization trend and demands of economic, social, and cultural ecosystems towards the industrial era 4.0. The experience of successful implementation in other government agencies and the private sector in modernizing services is proof that this step will have a positive impact.

In addition, the switch to electronic land certificates is expected to increase the value of Registering Property and ultimately improve the ranking of Ease of Doing Business in Indonesia. It will also reduce the obligation of people to physically come to the land office by 80%, which will give the perception of land services becoming more modern and efficient. At the same time, this move will address the perception that land services are still traditional.

⁶ Kompas.com with the title "Check out BPN's Complete Explanation of Electronic Land Certificate Questions", Click to read: <https://money.kompas.com/read/2021/02/06/082623626/simak-penjelasan-lengkap-bpn-soal-sertifikattanah-elektronik?page=all>. Retrieved August 27, 2023, 08:26 WIB.

The increase in natural disasters such as floods, landslides, and earthquakes is also a consideration, where electronic systems can help protect data and information from the risk of physical damage.

In Article 1 point 8 of the Regulation of the Minister of ATR/Ka BPN No. 1 of 2021, an electronic certificate is defined as "A certificate issued through an Electronic System in the form of an Electronic Document." Thus, the results of the land registration process will be generated in the form of electronic documents.

ATR/BPN Ministerial Regulation No. 1 of 2021 concerning Electronic Certificates has the position of being a type of regulation under the Law, which has binding legal force if it meets two conditions: ordered by a higher Law Regulation or formed according to authority. The basis for consideration (consideration) of this Ministerial Regulation refers to the UUPA, its implementing regulations, as well as the ITE Law and the Job Creation Law. Thus, this Ministerial Regulation is recognized and has binding legal force. It is formed based on orders from higher regulations and shows the attributive authority of the Ministry of ATR/BPN in government affairs in the field of land and spatial planning.

3. The Position of Electronic Land Certificates in Land Registration Law in Indonesia

In the Indonesian context, the value and significance of land is so high that state leaders have carefully formulated land and natural resources in Article 33 Paragraph (3) of the 1945 Constitution. This article concretely but also has a deep philosophical meaning, regulating the earth, water, and natural resources are in the control of the state and used for the welfare of the people. Human life being a social creature in an era of ever-growing globalization has brought an increase in demand for land, resulting in complicated problems.

The government has actually long anticipated this increase in land problems by issuing Law No. 5 of 1960 related to Basic Regulations on Agrarian Principles ("UUPA"). The UUPA became an important milestone in land law for the country. Regarding land registration, the government also issued PP (PP) No. 24 of 1997 which reaffirmed the urgency of people registering their land. To obtain land rights, several procedural stages must be followed, including the land registration stage where verification and other processes are required before land ownership rights can be issued. This process is important so that a person has a strong basis of rights to ownership of his land.⁷

The objectives of land registration in PP 24 of 1997 Article 3 are:

- a.** "In order to provide legal certainty and legal protection to holders of rights to a plot of land, flats and other registered rights so that it is easy to prove themselves as holders of the rights concerned;
- b.** In order to provide information to interested parties including the government so that it is easy to obtain the data needed to hold legal actions related to land and apartment units that have been registered;
- c.** For the orderly implementation of defense administration

Land registration aims to collect and provide complete information related to land parcels which is emphasized by the possibility of bookkeeping of land parcels whose physical data and juridical data are

⁷ I Dewa Ayu Widyani, Legal Certainty of Publication System in Land Registration in Indonesia based on UUPA, Journal of Law to-ra, vol 1, No. 3 December 2015.

incomplete or still in dispute, even though for that land has not been issued a certificate that is proof of its rights".⁸

Agrarian conflicts in Indonesia still show shortcomings in land administration and need improvement in the future to reduce the likelihood of future conflicts. The source of this problem comes from the use of a negative publication registration system that has a positive tendency in Indonesia. In this system, the government has not been able to provide legal certainty to the certificate owner because the information in the certificate is not thoroughly checked, and the government is not responsible for the correctness of the data. Agrarian issues in Indonesia, especially land disputes, are also about land rights.

The land registration system in a country is determined by the principles espoused by that country. Each country has a unique land publication system and can differ from other countries. The publication system on land registration consists of 2 types, namely positive and negative publications. The fundamental difference lies in the type of registration. Positive publications use the rights registration system, while negative publications use the deed registration system.

The certificate, being an authentic form of deed, has a strong evidentiary force. This is related to the publication system adopted by Indonesian land law, namely the negative publication system which basically has a positive element because it produces a certificate of proof of rights (certificate) which becomes a strong evidence. Thus, the publication system adopted is a negative publication system, not a positive publication system. In a positive publication system, the contents of the land registration book and the certificate issued as evidence do not receive absolute protection for third parties acting in good faith, even if it turns out that the contents of the information in it are not true.

Electronic land certificates do not eliminate the role of conventional land certificates as legal evidence of land ownership. Both electronic and conventional certificates are on an equal footing. This is also reflected in Government Regulation No. 18 of 2021 which regulates Management Rights, Land Rights, Flats Units, and Land Registration. This PP follows the provisions of Article 142 and Article 185 letter b of Law No. 11 of 2020 related to Job Creation. Article 84 PP No. 18 of 2021 describes electronic data and information as well as printed results into valid evidence in accordance with procedural law in Indonesia.

The implementation of land registration in accordance with Government Regulation No. 24 of 1997 describes a continuous process, including the collection, processing, bookkeeping, and maintenance of physical and juridical data related to land. This includes the provision of proof of rights to parcels of land that have rights as well as title to units of flats and other related rights.

In accordance with this description, electronic land certificates play a strong role in the land registration system in Indonesia. The process refers to the Minister of ATR/BPN Regulation No. 1 of 2021 related to Electronic Certificates. The issuance of electronic certificates is carried out either for the first time or in place of conventional certificates, although this is not mandatory. This approach is considered important to reduce the risk of document forgery.

Conclusion

From the results of this discussion, the conclusion is that the government issued a regulation on electronic certificates as a step to resolve disputes over ownership of land rights. The main purpose of electronic land certificate issuance is to increase efficiency and transparency in land registration. It is also directed to ensure more secure management of land records and documents, as well as increasing the intensity of services derived from the growth in the number of registered lands through PTSL.

⁸ Boedi Harsono, Indonesian Agrarian Law, Association of Land Law Regulations, Djambatan, Jakarta, 1982, p. 87.

Electronic certificates are also a response to modernization trends and the demands of economic, social, and cultural ecosystems moving towards industry 4.0. The success of electronic certificates implemented in other government agencies and the private sector is part of the modernization of services. This is also expected to increase the value of Registering Property, which supports the improvement of the Ease of Doing Business ranking in Indonesia. The implementation of electronic certificates also has the potential to reduce community attendance at land offices by up to 80% and change traditional perceptions regarding land services.

The existence of electronic certificates also has implications for legal force, with reference to Law No. 11 of 2008 related to Electronic Information and Transactions (ITE), Law No. 11 of 2020 related to Job Creation, and Regulation of the Minister of ATR / BPN No. 1 of 2021 concerning Electronic Certificates. Thus, electronic certificates have a strong position in the context of land registration law in Indonesia. In order to obtain an electronic certificate, the land registration procedure must follow the guidelines contained in the Minister of ATR/BPN Regulation No. 1 of 2021 regarding Electronic Certificates.

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