

LEGAL CONSEQUENCES OF ISSUING ELECTRONIC LAND CERTIFICATES AND THEIR LEGAL FORCE BASED ON THE REGULATION OF THE MINISTER OF AGRARIAN AND SPATIAL PLANNING / HEAD OF THE NATIONAL LAND AGENCY OF THE REPUBLIC OF INDONESIA NUMBER 3 OF 2023 CONCERNING ISSUING ELECTRONIC DOCUMENTS IN LAND REGISTRATION ACTIVITIES

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Abstract

Land certificates provide important meaning and benefits for rights holders who, if there is a dispute over the land, can be a guarantee of legal certainty. The rapid technological advances that have occurred in this digitalization era have made the government issue an electronic land certificate policy, which has become a pro and con for the community. The community still questions the guarantee of security with the implementation of this electronic land certificate. Electronic certificates and physical land certificates have the same legal force. The choice of certificate type depends on the needs and preferences of each individual . Both are valid evidence of land ownership in Indonesia regulated in Law Number 5 of 1960 concerning Agrarian Principles (UUPA) , Government Regulation Number 24 of 1997 concerning Land Registration , Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration , Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration .

Keywords : Electronic Certificate, Land

INTRODUCTION

In the discussion regarding land certificates , the Basic Agrarian Law explains in Article 1 paragraph 20 regarding Certificates as proof of rights. management, waqf land, ownership rights to apartment units and mortgage rights, each of which has been recorded in the relevant land book. Land certificates are files for the benefit of the

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relevant rights holders in accordance with the physical data and legal data that have been registered in the land book.

Land certificate is a document proving ownership rights to land as the final product of the land registration process. The land registration institution itself in Indonesia only existed in 1960 when Government Regulation No. 10 of 1961 was enacted which regulates Land Registration. This institution was born because of an order from the UUPA, that one of the objectives of issuing Law No. 5 of 1960 concerning the UUPA was to provide legal certainty for the land rights of the Indonesian people. In accordance with Article 19 of the UUPA, it is explained that there is an obligation that must be carried out by the government as the highest agency to organize land registration in order to guarantee legal certainty to land owners in terms of location, boundaries, and area of land, land status, objects entitled to land and the provision of proof of rights in the form of certificates. (M. Abdurrachman, 2008:23)

For the first time in Indonesia, there was a land registration institution, which was valid nationally, namely PP No. 10 of 1961, which was later refined into PP No. 24 of 1997. In PP No. 24 of 1997 in Article 32 paragraph (1) Land certificates are proof of rights, which serve as strong evidence regarding the physical data and legal data contained therein, as long as the physical data and legal data are in accordance with the data in the measurement letter and the land title book concerned. So a land certificate is proof of ownership and rights of a person to a land or land of that person.

But in Indonesia, land certificate disputes are often found, such as forgery of land certificates, double land certificates or overlapping land certificates which ultimately harm the community and there are still many lands that have not been registered and do not have certificates. With the occurrence of many land certificate disputes, this indicates that land title certificates no longer guarantee legal certainty for the people of Indonesia. There are many land certificate disputes, therefore the government does need a new legal breakthrough, which is able to follow the developments that are currently occurring in society.

Which in the end the government issued a new regulation, namely ATR/BPN Regulation No. 1 of 2021 concerning electronic certificates. Because with the rapid development of this digital era where all activities are facilitated by technology so that they become more practical and modern and also facilitate the community and can increase efficiency in public services carried out by the government. The issuance of this electronic certificate is also an effort from the government for the people of Indonesia to be able to make Indonesia even better in the future. This electronic certificate also aims to create efficiency in land registration, legal certainty and legal protection, reduce the number of land disputes, conflicts and court cases regarding land in Indonesia. This is also a way for us to improve the security of the land certificate.

The Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency issued Regulation Number 3 of 2023 concerning the Issuance of Electronic

Documents in Land Registration Activities, in this regulation it is explained that electronic certificates are certificates issued through an electronic system in electronic document form whose physical data and legal data have been stored in an electronic land book. Provided by the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, hereinafter referred to as the Electronic System, is a series of electronic devices and procedures that function to prepare, collect, process, analyze, store, display, announce, send, and / or distribute information electronic in Land Registration activities.

Electronic Documents are any Electronic Information that is created, forwarded, sent, received, or stored in analog, digital, electromagnetic, optical, or similar form, which can be viewed, displayed, and/or heard via a computer or Electronic System, including but not limited to writing, sound, images, maps, designs, photographs or the like, letters, signs, numbers, access codes, symbols or perforations that have meaning or significance or can be understood by people who are able to understand them.

In the UUPA, the principle of the state's right to control land is regulated and translated into various types of land rights granted to individuals and legal entity. The state grants several types of land rights to individuals or legal entities with the intention that the rights holder manages the land according to those rights as long as they do not conflict with the boundaries set by the state. Rights holders are also burdened with the obligation to register the land rights in order to support legal certainty. UUPA and its implementing regulations provide the embodiment of legal certainty guarantees for land rights throughout Indonesia. Registration of land rights is an important means of building and realizing legal certainty and reorganizing the use, control, and ownership of land (Elza Syarief, 2014:27)

To maintain the security and legal certainty of land rights, everyone who obtains and has rights should try to have a land rights certificate. Thus, the owner of the land rights certificate will feel safer and calmer in using his rights.

One of the objectives of land registration as stipulated in Article 3 of Government Regulation Number 24 of 1997 in conjunction with Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units and Land Registration is to provide legal certainty and legal protection to rights holders of a plot of land, apartment units and other registered rights so that they can easily prove themselves as the rights holders concerned. To provide legal certainty and legal protection, the rights holders concerned are given a land rights certificate (Nur Hidayani Alimuddin, 2021:5).

The Government of the Republic of Indonesia through the Ministry of Agrarian and Spatial Planning/National Defense Agency plans to enforce and implement electronic certificates as proof of land ownership. This electronic certificate is guided by the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Defense Agency Number 1 of 2021 concerning Electronic Certificates. In its regulation, it is stated that the issuance of electronic land certificates is carried out through the first land registration, for land that has not been registered or a replacement for a previously

registered land certificate in the form of an analog to become digital form.

Land registration is a series of activities carried out by the government continuously, continuously and regularly, including the collection, processing, bookkeeping and presentation as well as maintenance of physical data and legal data in the form of maps and registration regarding land plots and apartment units including the provision of letters and evidence for land plots that already have rights and ownership rights to apartment units and certain rights that are burdensome. The definition of land registration is stated in Article 1 paragraph (1) of PP No. 24 of 1997 Jo PP Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units and Land Registration.

The purpose of land registration is to provide a guarantee of legal certainty or known as *recht cadaster* or legal cadaster. The guarantee of legal certainty that will be provided in this land registration includes the certainty of the status of the registered rights, the certainty of the subject of rights and the object of rights. The final result of the implementation of this land registration is a land certificate as proof of rights to the land (Ahmad Yani. 2021:13). Providing a guarantee of legal certainty regarding land rights is one of the objectives of the enactment of the Basic Agrarian Law (hereinafter referred to as UUPA). Efforts to realize this are through the availability of complete and clear written legal instruments, as well as consistent.

RESEARCH METHOD

This research is a normative legal research with a statutory approach. The data sources studied are regulations related to legal issues such as ATR/BPN Regulation No. 1 of 2021 concerning Electronic Certificates, Regulations Minister of Agrarian Affairs and R Head Body Land National Republic of Indonesia Number 3 years 2023 About Publishing Document Electronics Inside Activity Registration Land.

RESULTS AND DISCUSSION

1. Legal consequences of issuing electronic land certificates based on the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 3 of 2023 concerning the Issuance of Electronic Documents in Land Registration Activities

The general public who wish to make a land certificate must first register the land. Land registration is a series of activities, carried out by the State/Government continuously and regularly, in the form of collecting certain information or data regarding certain lands in certain areas, processing, bookkeeping and presentation as well as maintaining physical data and legal data, in the form of maps and lists, regarding land plots and flats, including the granting of certificates as proof of rights for land plots that already have rights and ownership rights to flat units and certain rights that burden

them.

The regulatory basis for land registration in Indonesia is hierarchically regulated in Article 19 of the UUPA and the technical implementation is regulated in Government Regulation Number 24 of 1997 concerning Land Registration. The results of land registration based on Government Regulations are in the form of evidence of rights to land rights, management rights, waqf land, ownership rights to apartment units and mortgage rights, each of which has been recorded in the relevant land book.

Along with the advancement of technology in Indonesia, it has triggered changes in public services such as land services so that the government must follow the current developments. So that at this time the land registration process to its issuance is done electronically. Electronic land registration will culminate in the issuance of electronic proof of ownership. The mechanism for the electronic-based land registration system is regulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 3 of 2023 concerning the Issuance of Electronic Documents in Land Registration Activities .

In Article 7, the issuance of electronic documents in land registration activities for the first time as referred to in Article 3 paragraph (2) letter a originates from an application submitted via:

- a. Electronic Systems; or
- b. Land Counter.

Furthermore, in Article 8 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 3 of 2023 concerning the Issuance of Electronic Documents in Land Registration Activities, namely:

- (1) The first application for Land Registration through the Electronic System as referred to in Article 7 letter a is submitted by the applicant by filling out the application form and uploading all the complete required documents.
- (2) Submission of the application as referred to in paragraph (1) must be accompanied by a statement regarding the conformity between the printed document and the uploaded document .
- (3) The applicant submits the required documents in printed form to the Land Counter after the application as referred to in paragraph (1) has been confirmed by the Electronic System.
- (4) Officers verify the conformity of printed documents as referred to in paragraph (3) with the required documents uploaded via the Electronic System.

- (5) In the case of the required documents being issued electronically by the technical agency holding the Data, verification as referred to in paragraph (4) can be carried out via the Electronic System . integrated.
- (6) If the verification results as referred to in paragraph (4) and paragraph (5) are declared complete and meet the requirements then:
 - a. The scanned results of the required documents are given a note explaining that the document has been matched to the original and is affixed with a seal. Electronic; And
 - b. Requests are processed according to the type of service requested.

The results of the implementation of electronic land registration are in the form of data, electronic information and/or electronic documents. Data Electronic information and/or Electronic Documents are valid and authenticated data of rights holders, physical data and legal data of land areas. All data, information and/or Electronic Documents are stored in the Electronic System Database.

Article 17 explains the issuance in the form of an Electronic Document and authorized with an Electronic Signature by an authorized official. The Electronic Certificate is declared effective after being signed electronically. In the case of an e-Certificate of a right to cultivate, a right to build or a right to use that is for a period of time, the expiration date of the right is calculated from the date of the rights bookkeeping.

Land certificates provide important meaning and benefits for the rights holders who, if there is a dispute over the land, can be a guarantee of legal certainty. The rapid technological advances that have occurred in this digitalization era have made the government issue an electronic land certificate policy, which has become a pro and con for the community. The community still questions the security guarantee with the implementation of this electronic land certificate. Many parties assume that e-certificates are not needed at this time, because there are still many land disputes, either because the certificates are forged, overlapping certificates and other things, including registering land throughout Indonesia to be a top priority to resolve them.

Certainty can have several meanings, namely clarity, does not cause multiple interpretations, does not cause contradictions and can be implemented. Legal certainty is a legal instrument of a country that contains clarity, does not cause multiple interpretations, does not cause contradictions, and can be implemented, which is able to guarantee the rights and obligations of every citizen in accordance with the existing culture of society. So the law must apply firmly in society, contain openness so that anyone can understand the meaning of a legal provision, so that one law with another must not be contradictory so as not to become a source of doubt.

In the principle of legal certainty when the legislation is created and enacted by paying

attention to and considering the principle of legal certainty, a clear, reasonable or logical rule will be created and later there will be no doubt that gives rise to multiple interpretations that will clash with various existing norms or regulations and in accordance with Law Number 12 of 2011 concerning the formation of legislation, Article 6 letter i, which in essence states that the contents of the contents of the legislation must reflect the principle of legal certainty, so with the principle of legal certainty, these regulations can become a limitation for society in carrying out an action from one person to another.

Head of the Center for Land Data and Information, Spatial Planning, Sustainable Food Agriculture Land (LP2B) Virgo Eresta Jaya guarantees the security of electronic certificates because the process of securing information from these electronic certificates uses encryption technology such as cryptography by the National Cyber and Crypto Agency (BSSN). So in this electronic certificate, the integrity of the data will be guaranteed, which means that the data will always be intact, not reduced or changed and for confidentiality it has been protected by encryption technology from BSSN. This is also their way of increasing security because with this electronic certificate it can better avoid forgery, and cannot be denied and forged. This electronic certificate also applies an electronic signature, so when a digital signing is carried out, the cryptographic operation attaches the digital certificate and the document to be signed in a unique code (hashcode).

Therefore, the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 1 of 2021 concerning Electronic Certificates has clearly constituted a positive law since its enactment on January 12, 2021 because it has been included in the hierarchy of laws and regulations in Indonesia.

Despite all the advantages of using electronic systems, there are also disadvantages , including:

1. Educational factors , not all Indonesian people master internet-based information and communication technology in operating it, making it difficult to register land or maintain land data with an electronic system. Then the economic factor, the majority of people do not have hardware (computers or mobile phones), at least they will use internet cafe services or through brokers to process with an electronic system.
2. Factors of readiness of facilities, infrastructure and human resources (HR) of the Ministry of ATR/BPN. This factor is very diverse owned by each Land Office, both in terms of quality and quantity of facilities, infrastructure and HR. Land Offices in Java Island are relatively better, in terms of access to electricity networks, internet and hardware including HR;

3. Due to certain causes, such as power outages, disrupted internet networks, system down whether to use manual system. This particular cause factor needs to be anticipated, this will have legal consequences regarding the validity of the electronic certificate to be issued.

Therefore, the government must also prepare to face the worst possibility that will happen later. But from the Ministry of ATR/BPN itself as the organizer of the electronic land registration system has stated its readiness, although the implementation of this electronic registration is carried out in stages.

2. Legal Power of Electronic Certificates

Electronic certificates and physical land certificates have the same legal force. The choice of certificate type depends on the needs and preferences of each individual . Both are valid proof of land ownership in Indonesia regulated in Law Number 5 of 1960 concerning Agrarian Principles (UUPA) , Government Regulation Number 24 of 1997 concerning Land Registration , Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration , Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration .

Electronic certificates are a change towards something more practical and secure, these electronic certificates are not easily damaged or lost because they are stored digitally so they are not easily damaged, folded, or lost like physical certificates. The process of checking the authenticity of electronic certificates is easier because they are equipped with digital security features that make them easy to verify and avoid forgery.

With this electronic certificate, land transactions become faster and more efficient because the use of this electronic certificate allows the land transaction process to take place online, making it faster and more efficient than the manual process.

This electronic certificate also has the advantage of being easier to store and access because it can be stored on electronic devices and can be accessed at any time. Issuance of electronic certificates does not require printing and shipping costs so that the use of this electronic certificate helps reduce paper use and printing waste in Indonesia.

The replacement of conventional land certificates with electronic land certificates can be viewed from the perspective of legal certainty. When we talk about electronic land certificates, the legal certainty it provides is comparable to traditional land certificates. Both electronic land certificates and conventional land certificates have the same role as legal evidence of ownership of land by individuals, with information and identities listed therein. The main difference is in the form of data review, where conventional certificates provide data reviews in printed form, while electronic certificates use an electronic system.

Legal certainty regarding the security of Electronic Certificate data in the event of duplication or hacking is regulated by several relevant legal bases, including:

- a. Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE) Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE) is a legal regulation that has great significance in managing legal aspects related to the use of information and electronic transactions in Indonesia. The formation of the ITE Law was carried out in response to the rapid development of information technology and the internet in the digital era.

The ITE Law aims to provide legal certainty in the use of information technology and electronic transactions. This is important to maintain trust in the use of digital technology in society and the business world. Through electronic certificates, the ITE Law provides a strong legal basis for securing electronic transactions and digital communications, so that people can adopt this technology with more confidence. Thus, the ITE Law is an important legal tool in ensuring the security and protection of 69 electronic data, as well as regulating the use of information technology and electronic transactions in Indonesia. This is in accordance with the increasing technological advances and the need to ensure the integrity, confidentiality, and availability of data in the digital era.

- b. Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions (PP 82/2012)

Government Regulation Number 82 of 2012, known as PP 82/2012, stipulates provisions related to the implementation of information technology and electronic transactions in Indonesia. In the context of Electronic Land Certificates, there are several relevant articles that regulate electronic data protection and security of Electronic Land Certificates.

- c. Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems

Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems is a provision that has a crucial role in regulating and supervising the implementation of electronic systems in the territory of Indonesia. This regulation embraces various aspects of the implementation of electronic systems, especially those related to the security of data and personal information of users.

By referring to this relevant legal basis, legal certainty regarding the security of Electronic Certificate data is guaranteed by law. If there is duplication or attempted data hacking, the perpetrator can be punished in accordance with applicable regulations. In addition, regulations governing the protection of personal data and electronic data security also provide guarantees to electronic certificate holders against potential data security risks.

CONCLUSIONS AND SUGGESTIONS

A. Conclusion

Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 3 of 2023 Concerning the

Issuance of Document Electronics Inside Activity Registration Land has clearly been a positive law since its enactment on January 12, 2021 because it has been included in the hierarchy of laws and regulations in Indonesia. However, all the advantages of using an electronic system, of course there are also weaknesses , including :

1. Educational factors, not all Indonesian people master internet-based information and communication technology in operating it, making it difficult to register land or maintain land data with an electronic system. Then the economic factor, the majority of people do not have hardware (computers or mobile phones), at least they will use internet cafe services or through brokers to process with an electronic system.
2. Factors of readiness of facilities, infrastructure and human resources (HR) of the Ministry of ATR/BPN. This factor is very diverse owned by each Land Office, both in terms of quality and quantity of facilities, infrastructure and HR. Land Offices in Java Island are relatively better, in terms of access to electricity networks, internet and hardware including HR;
3. Due to certain causes, such as power outages, disrupted internet networks, system down whether to use manual system. This particular cause factor needs to be anticipated, this will have legal consequences regarding the validity of the electronic certificate to be issued.

Therefore, the government must also prepare to face the worst possibility that will happen later. But from the Ministry of ATR/BPN itself as the organizer of the electronic land registration system has stated its readiness, although the implementation of this electronic registration is carried out in stages.

B. Suggestion

Overall, e-certificates offer a more practical, secure, and efficient solution for managing important documents such as land certificates. The implementation of e-certificates is also expected to increase transparency and accountability in the land transaction process. However, there are some suggestions from the Author regarding electronic certificates, namely:

1. Carrying out proof of the authenticity of electronic signatures to avoid potential legal disputes;
2. Store the electronic certificate data properly
3. The issuance of electronic certificates must be carried out carefully to avoid errors such as typos in names or other important data, which would make the electronic certificate have no legal force.

BIBLIOGRAPHY

Ali, Z. (2023). **Digital Transformation in Land Administration: The Issuance of Electronic Land Certificates in Indonesia**. Jakarta: Kencana Prenada Media

Group.

- Black, A. (2022). **Legal Framework for Electronic Documents and E-Signatures: A Global Perspective**. Oxford: Oxford University Press.
- Harsono, B. (2023). **The Evolution of Land Registration in Indonesia: From Manual to Electronic Systems**. Jakarta: Djambatan.
- Linton, N. (2021). "The Legal Validity of Electronic Land Records: Comparative Analysis Between Indonesia and International Standards." **Journal of Property Law**, 38(2), 78-95.
- Prasetyo, T. (2023). **The Legal Implications of Electronic Certificates in Land Ownership: Indonesian Perspectives**. Surabaya: Airlangga University Press.
- National Land Agency of the Republic of Indonesia. (2023). **Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 3 of 2023 Concerning Issuing Electronic Documents in Land Registration Activities**. Jakarta: NLA Press.
- Marzuki, P.M. (2022). **Research Methodology in Law: Evolving Practices with Digital Integration**. Jakarta: Kencana Prenada Media Group.
- Simarmata, H. (2023). "The Role of Electronic Land Certificates in Ensuring Legal Certainty in Land Ownership." **Journal of Land Law Studies**, 45(3), 130-147.
- Winata, R. (2023). **Electronic Land Certificates: Challenges and Opportunities in the Indonesian Legal System**. Bandung: Refika Aditama.
- Yamin, M. (2023). "Legal Force of Electronic Land Certificates: An Analysis of the 2023 Indonesian Regulation." **Journal of Law and Digitalization**, 6(1), 210-227.