

IMPLEMENTATION OF ELECTRONIC LAND CERTIFICATES AS LEGAL LAND OWNERSHIP

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Abstract

With the issuance of Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 1 of 2021 concerning Electronic Certificates, this is a new breakthrough from the government to protect the public and provide legal certainty regarding ownership of land rights. Due to the frequent occurrence of various land disputes which will ultimately be detrimental to society, such as falsification of land certificates, the existence of multiple land certificates or overlapping land certificates and the rise of the land mafia. The problem formulation for this research is how to implement the implementation of electronic land certificates as legal land ownership? and what about legal protection and certainty after the implementation of electronic land certificates? In practice, 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 is relevant to be implemented today in line with the rapid development of science, technology and information. Legal certainty in the process of obtaining land rights is based on statutory rules and government regulations to prevent misuse of land rights, and can provide legal protection for land rights owners. This Ministerial Regulation aims to realize the modernization of land services in order to improve indicators of ease of doing business and public services to the community, thereby optimizing the use of information and communication technology by implementing electronic-based land services.

Keywords: *Electronic Land Certificate, Legal Certainty, Legal Protection*

1. INTRODUCTION

The constitutional framework governing land possession and management in Indonesia is embedded in the 1945 Constitution, specifically Article 33 paragraph (3). This constitutional provision unequivocally asserts that the State holds control over land, water, and natural resources contained within, with the primary objective of utilizing these resources for the maximum prosperity of the people. The inclusion of such provisions in the Indonesian Constitution reflects a foundational commitment to ensuring that the nation's natural wealth benefits its citizens collectively.

The existence of land regulations in Indonesia serves a dual purpose. First and foremost, these regulations aim to transform the destiny of Indonesian citizens concerning their control and ownership of land rights. This is particularly crucial in preventing the unauthorized use of land by individuals who do not rightfully own it. Second, these regulations act as a safeguard against potential abuses of land rights, forming a legal framework that defines various land rights, including ownership, land use, building rights, lease rights, utilization rights, land clearing rights, and others stipulated by the Land Law (UUPA). Importantly, the registration of these rights with the National Land Agency (BPN) is a requisite step to obtain a certificate, a document that serves as a legal guarantee for land ownership. The mechanism for obtaining land ownership certificates is regulated

through Government Regulation No. 24 of 1997 concerning Land Registration, in conjunction with Government Regulation No. 18 of 2021 regarding Management Rights, Land Ownership Rights, Apartment Units, and Land Registration (Alimuddin, 2021).

However, the ownership of land certificates as proof of land rights control undeniably leaves gaps in legal certainty that can potentially harm the people. Issues such as land certificate forgery, dual land certificates, overlapping land certificates, and the prevalence of land mafias lead to various land disputes, ultimately disadvantaging the community (Nafan, 2022). An example of such disputes occurred in Denpasar, Bali, where a lawsuit against dual land certificates emerged in the case of Judge's Decision Number 139/Pdt. G/2020/PN. Dps, related to Unlawful Acts committed by the Defendant and Joint Defendant. The disputed land was legally transferred to the Plaintiff through a legitimate sale according to the law, resulting in the legal consequence that the Defendant and Joint Defendant must adhere to and comply with this legally binding decision (*inkracht van Gewijsde*).

The ramifications of land certificate forgery, dual certificates, and land mafias are far-reaching, resulting in a multitude of land disputes that adversely affect the wider community. This challenges the conventional notion that land ownership certificates inherently provide airtight legal certainty for the public. Consequently, there is a pressing need for a legal paradigm shift that can effectively navigate the intricate dynamics of society. If societal changes transpire, the requisite legal adjustments and augmentations in both positive legal norms and institutional frameworks become imperative for meeting the evolving legal needs of the community (Yusra, 2013). Failure to enact such adaptations would result in legal stagnation, aligning with the widely recognized adage that "the law will inevitably lag behind the progress of time" (*het recht hink achter de feiten aan*).

In response to these challenges, on January 21, 2021, the Minister of Agrarian and Spatial Planning/Head of the National Land Agency issued Ministerial Regulation Number 1 of 2021 concerning Electronic Certificates. This regulation represents a proactive attempt to address the legal needs of society in the face of evolving times. It endeavors to modernize land services, aiming to enhance business ease indicators and public services through the strategic application of information and communication technology in the implementation of electronic-based land services.

The introduction of this regulation has sparked extensive discussions within society, eliciting a range of opinions. While some view it as a progressive move toward modernizing land services, anticipating enhanced security, legal certainty, and protection for land rights holders, others express reservations. Critics perceive the plan as hastily implemented, lacking the necessary maturity in preparation. Their concerns center around potential vulnerabilities in land registration data security, potentially leading to uncertainty in land rights. This diversity of perspectives underscores the complexity and sensitivity of implementing legal reforms in a rapidly evolving societal landscape.

This research aims to investigate and analyze the implementation of electronic land certificates as a form of legitimate land ownership. Within this context, the study will concentrate on two primary aspects: how the implementation of electronic land certificates is executed as a valid measure affirming land ownership and how this system provides legal protection and certainty for landowner's post-implementation of electronic land certificates. Consequently, the research endeavors to offer a more profound

understanding of the impacts, successes, and challenges associated with the utilization of electronic land certificates in the context of legitimizing land ownership.

2. RESEARCH METHODS

The research in question likely employs a mixed-methods approach, combining legal analysis, documentary examination, and empirical investigation. Initially, the study appears grounded in a comprehensive legal analysis, as evidenced by the examination of constitutional provisions, national laws, and government regulations related to land ownership and the implementation of electronic land certificates. This legal scrutiny encompasses an in-depth review of the 1945 Constitution, Land Law (UUPA), and specific government regulations governing land registration, such as Government Regulation No. 24/1997 and Government Regulation No. 18/2021. The legal analysis serves as the foundational framework, establishing the regulatory context and legal nuances surrounding land ownership and the transition to electronic certificates.

Moreover, the research seems to incorporate empirical methods, including a case study approach. By citing a specific legal case in Denpasar, Bali, involving a dispute over dual land certificates (Putusan Hakim Nomor 139/Pdt. G/2020/PN. Dps), the study delves into real-world instances of challenges associated with land ownership and the potential misuse of land certificates. This empirical dimension likely involves field studies, interviews, and an exploration of tangible cases to elucidate the practical implications, successes, and challenges tied to the implementation of electronic land certificates. Through this combined legal and empirical approach, the research aims to provide a nuanced understanding of the complexities surrounding the legitimacy of land ownership, contributing to discussions on the effectiveness of electronic land certificates and potential legal reforms.

3. DISCUSSION

3.1. Implementation of Electronic Land Certificates as Valid Land Ownership

The regulatory framework governing land registration in Indonesia is structured hierarchically, primarily under the purview of Article 19 of the Agrarian Basic Law (UUPA). The technical intricacies of its implementation are further delineated in Government Regulation Number 24 of 1997, in conjunction with Government Regulation Number 18 of 2021. The latter introduces a regulatory approach characterized by a negative principle containing positive elements. This approach culminates in the creation of a substantively robust proof-of-rights document, serving as compelling evidence. Explicitly, Article 5 designates the National Land Agency (BPN) as the governmental entity responsible for land registration throughout the entire Republic of Indonesia (Urip Santoso, 2019). Moreover, Article 6, paragraph (1), underscores that the implementation of land registration is entrusted to the Head of the Land Office at the District/City level.

In light of the accelerated pace of globalization and the concomitant progress in science, technology, and information, governance structures necessitate adaptation. Foundational to these adaptations are extant laws and regulations, such as Republic of Indonesia Law Number 19 of 2016 concerning Electronic Information and Transactions. The technical modalities of this legislation are subsequently expounded upon in Government Regulation Number 71 of 2019, which pertains to the Implementation of Electronic Systems and Transactions. Notably, Article 1, Numbers 4 and 5, of this

regulation delineate the governance of electronic system providers. This includes public electronic system providers affiliated with government agencies or institutions designated by government entities. Consequently, the implementation of the state through an electronic system finds applicability across various governance domains, specifically within the realm of land, including the intricate mechanisms of land registration systems and their resultant outputs.

The procedural intricacies of land registration within an electronic system are further codified in the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 1 of 2021 concerning Electronic Certificates. The culmination of this system yields electronic documents, interpreted in accordance with Article 1, Number 2, of the Ministerial Regulation. Electronic documents are defined as any information transmitted, created, sent, received, or stored in analog, digital, electromagnetic, optical, or similar formats. These documents are perceivable and audible through a computer or electronic system, encompassing various mediums such as writing, sound, images, maps, designs, photos, and the like. Importantly, the electronic document in focus is specifically denoted as an electronic certificate or e-certificate.

In the realm of land registration, data, electronic information, and electronic documents constitute repositories of valid and authentic information related to land rights, encompassing physical, and juridical data. These datasets are meticulously stored within an electronic system database, reflecting a comprehensive implementation process involving data collection, processing, and presentation. The outcomes of this process are categorized into two distinct types: electronic documents issued directly through the electronic system, authenticated through electronic signatures, and documents transformed into electronic format, subsequently validated by authorized officials or designated authorities, and digitally stamped within the electronic system.

The implementation of the aforementioned regulatory framework bears direct consequences on both currently registered land and those slated for future registration. As outlined in Article 12 of the Government Regulation, lands endowed with specific rights, including land rights, management rights, ownership rights to condominium units, encumbrance rights, or waqf land, undergo electronic registration and are issued electronic certificates (e-certificates). These e-certificates serve as tangible proof of ownership, with the corresponding access granted to the rights holder within the electronic system. However, exceptions to e-certificate issuance exist, particularly if the physical or juridical data is incomplete or remains under dispute. In the context of already registered land, the transition involves the replacement of traditional certificates with e-certificates through applications for land registration data maintenance services. This process is contingent upon the congruence of physical and juridical data in the land book and certificates with the corresponding data in the electronic system.

The antecedent design for the transition of land registration services to electronic systems was conceived since the enactment of Government Regulation No. 24 of 1997 (Monalu, 2023). Specifically, Article 35, paragraphs (5), (6), and (7), delineate a gradual approach to storing land registration data using electronic and microfilm equipment. The resulting documents, produced through such means, carry probative force once signed and stamped with the official seal by the Head of the relevant Land Office. The methodologies for storing, presenting, and disposing of these documents, as well as the broader method of managing land registration data with electronic and microfilm

equipment, are prescribed by the Minister. Land registration activities, consequent to this transition, will be issued in the form of electronic documents, reflecting a discernible shift from conventional documentation practices.

These electronic documents signify a transformative departure from conventional documentation practices, signifying a governmental initiative to align with the digital era. The establishment of regulations governing electronic documents underscores the government's commitment to streamlining public services and promoting public engagement in the oversight of governmental activities. The legal framework governing electronic documents is explicitly articulated in Article 1, paragraph (4), of Law Number 19 of 2016. The presence of such regulations is purposively designed to actualize E-government practices, fostering a more streamlined and transparent implementation of government activities.

Upon the completion of electronic land registration, all erstwhile analog document replacements will assume the form of electronic documents. The execution of Regulation of the Minister of ATR/BPN No. 1 of 2021 mandates a proactive stance from the government to anticipate potential challenges that may arise during its implementation. However, the Ministry of ATR/BPN, functioning as the orchestrator of electronic land registration systems, has affirmed its preparedness, despite the phased nature of the electronic registration rollout.

At the regulatory level, the land registration system facilitated through electronic systems is underpinned by robust and comprehensive legal foundations. Nevertheless, the success of a regulation's implementation extends beyond its theoretical soundness to encompass the readiness of various stakeholders involved. This pertains to both the organizers of electronic land registration systems, exemplified by the Ministry of ATR/BPN, and the general public, constituting individuals seeking to register or replace their land certificates. Since the enactment of the Ministerial Regulation on e-certificates on January 12, 2021, the Ministry of ATR/BPN, in collaboration with diverse print and electronic media outlets, has initiated efforts to inform and disseminate information about this regulatory framework. This proactive dissemination aims to serve as a conduit for the public, facilitating their acquisition of knowledge and insights pertinent to the implementation of e-certificates.

3.2. Protection and Legal Certainty Post-Implementation of Electronic Land Certificates

In the broader context, individuals aspiring to establish land certificates are required to initiate the land registration process. Land registration constitutes an ongoing and methodical sequence of activities executed by the State or Government, encompassing the systematic gathering of precise information or data pertinent to designated lands within specific regions. This intricate process encompasses activities such as data processing, meticulous record-keeping, presentation, and the upkeep of both physical and juridical data, manifesting in the form of maps and lists delineating land areas and condominiums. Moreover, this process entails the issuance of certificates as evidentiary documentation affirming ownership rights over lands endowed with established rights, ownership of condominium units, and specific associated rights (Harsono, 2015).

The promulgation of Regulation No. 1 of 2021 by the Minister of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN), specifically addressing electronic certificates, constitutes a governmental endeavor to afford legal protection to its constituents. The concern with electronic certificates does not lie in their physical

manifestation but rather in the electronic procedural trajectory spanning from land registration to certificate issuance. Central to this concern is the imperative of data security, safeguarding the rights holder and affirming the validity of electronic certificates within the purview of legal proceedings. Unlike their physical counterparts, susceptible to loss, misuse, and replication, the Minister of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) contends that electronic land certificates boast enhanced security. Nevertheless, the revocation of physical certificates is contingent upon their conversion into electronic form. The safeguarding of electronic land certificates is envisaged through the application of encryption technology, notably cryptography, overseen by the National Cyber and Cryptography Agency (BSSN).

In the pursuit of legal certainty, the promulgation of ATR/BPN Regulation No. 1 of 2021 underscores a commitment to the fundamental principle of legal certainty in the formulation and dissemination of regulations. This commitment ensures the lucidity, reasonableness, and logical coherence of regulations, thereby mitigating doubt and preempting conflicting interpretations with established norms or regulations. This regulatory framework aligns seamlessly with the overarching legal landscape, particularly Law No. 12 of 2011, which accentuates the imperative of legislation embodying the principle of legal certainty. This principle, in essence, serves as a regulatory constraint shaping public conduct and interactions (Marzuki & Sh, 2021).

The overarching objective of land registration activities is to confer legal certainty upon land, thereby serving the interests of land rights holders by facilitating the expeditious substantiation of their entitlement to specific land parcels (Huda & Wandebori, 2021). Legal certainty, integral to this process, finds nexus with the evidentiary paradigm, wherein electronic/digital certificates emerge as valid legal evidence. This status represents an extension of valid evidence as stipulated in Indonesian procedural law.

The ownership of land inherently entails a meticulous registration process, particularly during instances of rights transfer, with the primary aim of fortifying legal certainty and safeguarding all involved parties. This registration process is contingent upon the antecedent registration and documentation of land in a legally valid deed. The imperative to register land serves as a clarion indicator that legal certainty and protection extend to transactions involving the purchase and sale of previously registered land. This strategic approach ensures that the transfer of land rights resultant from such transactions can be duly re-registered and recorded in a valid deed, thereby furnishing robust evidence of ownership legitimacy.

The obligation to register land signals that the sale and purchase transactions which can provide legal certainty and protection are those involving land that has been previously registered and recorded (Wahid et al., 2019). This ensures that the process of transferring land rights resulting from such transactions can be re-registered and recorded in a valid deed, thereby providing legitimate evidence of strong ownership. In a bid to mitigate land disputes and bolster the credibility of land ownership certificates as legal guarantees within the Indonesian legal framework, Regulation No. 1 of 2021 regarding Electronic Certificates was promulgated by the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency. This regulatory intervention is meticulously crafted to enhance legal certainty concerning land ownership through the utilization of electronic certificates.

The essence of land registration in Indonesia lies in the provision of legal certainty (*rechts cadaster*) regarding land rights and the concomitant legal protection accorded to land ownership. Through the act of registering land, owners acquire a documented proof of ownership, thereby cementing legal certainty. The *recht cadaster* registration process is expressly designed to furnish legal certainty and protection to land rights holders, culminating in the creation of the Land Book and Land Certificate, which comprises a Copy of the Land Book and a Survey Letter (Adrian Sutedi, 2023).

The Ministerial Regulation, in its specificity, addresses the nuanced utilization of electronic certificates as legal evidence. Article 5 of this regulatory framework unequivocally affirms that electronic documents and their tangible counterparts stand as valid legal evidence, representing an extension of valid evidence as dictated by Indonesian procedural law. Notably, for evidentiary purposes, access to electronic documents is facilitated through an electronic system. This elucidation serves to dispel any potential conflicts or contradictions between the Ministerial Regulation and extant legal frameworks.

4. CONCLUSION

Based on the discussion above, the researcher's conclusions encompass two primary aspects. Firstly, Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No. 1 of 2021 concerning Electronic Certificates is considered relevant for current implementation, aligning with the rapid advancements in science, technology, and information. The electronically-based land registration system generates electronic certificates (e-certificates), offering benefits to the public in terms of easy access to digital data and safeguarding against the forgery of land certificates, a foundational element in ensuring legal certainty over land ownership rights. Secondly, legal certainty in the application of electronic certificates as evidence of land possession in Indonesia is expounded upon through legal regulations and factual analysis. The Ministerial Regulation is acknowledged as a legislative framework structured in accordance with the norms of legal drafting. Furthermore, it is recognized as a legal instrument resistant to frequent changes due to its relevance to current conditions.

the research suggests two key measures. Firstly, the implementation of an extensive training program for Human Resources at the National Land Agency Office is recommended to optimize compliance with Regulation No. 1 of 2021 on electronic certificates. This training aims to elevate competency and service quality for the community, with simultaneous widespread socialization efforts for seamless adoption of information technology across all societal segments. Secondly, a focus on upgrading facilities and infrastructure is crucial to ensure accessible, efficient, and effective public services. The envisaged superior services are anticipated to accelerate land certification targets and enhance the efficiency of electronic services in the land sector. The synergistic approach of human resource development and infrastructure improvement is expected to holistically bolster the successful execution of the newly instituted regulation.

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