

Application of Electronic Certificates as a Form of Legal Protection & Land Tenure Hak

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Abstract

The rapid advancement of information and communication technology should be accompanied by the most recent legal discoveries in order to balance society's increasingly complex dynamics, because if there is no law, the law would constantly lag behind the times. The government is attempting to make a new legal breakthrough with the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 1 of 2021 concerning Electronic Certificates, which aims to realize the modernization of land registration to improve indicators of ease of doing business and public services to the community, while also optimizing the use of information technology and communication by implementing electronic-based land services. The research method employed in this study is normative legal research (doctrinal legal research). In this study, the approach method is statutory, that is, it is based on legislation and regulations. The study's findings reveal that the conversion of land certificates, which were formerly in the form of documents (letters), to electronic format, which has raised concerns in the community, is unwarranted because both have binding legal force under Indonesian procedural law. The Law of the Republic of Indonesia Number 19 of 2016 about Electronic Information and Transactions and the Regulation of the Minister of ATR/BPN Number 1 of 2021 concerning Electronic Certificates provide legal protection for the use of electronic certificates.

Keywords

electronic certificate; electronic system; legal protection; information; communication technology



I. Introduction

Rapid progress has been made in the fields of science and technology. In particular, technological development has had far-reaching effects on people's way of life (Fathoni, 2021). We can't deny that the rise of the Internet and electronic commerce has ushered in a new era of globalization that has spread to every corner of the globe; new technologies will inevitably lead to shifts in organizational structure and social relations as a result of the integration or convergence of information and media technologies made possible by their development. In addition to telecommunications (Ramli, 2018). This sequence materializes in the shape of brand-new technological goods that integrate the features of information systems and computer-based communication systems into a single package they call an information system network, or what we'll call electronic systems from here on out (Alwajdi, 2021). Organization must have a goal to be achieved by the organizational members (Niati et al., 2021). The success of leadership is partly determined by the ability of leaders to develop their organizational culture. (Arif, 2019).

The importance of technology, both positively and negatively, makes this digital era a new problem. Politics, socioculture, defense, and information technology are a few of the

current era's obstacles (Mayana & Santika, 2021). The internet network gave birth to digital, particularly computer information technology. The capabilities of the media make it easier for people to obtain information fast, even when not in person. The progression of technology will be analogous to ocean currents that continue to flow throughout human existence. Therefore, technology must be mastered and effectively controlled to deliver the greatest possible profit (Akbar & Yazid, 2021).

Historically, land rights allowed authorization to use the land in question, as well as the earth and water on it, and are today regulated by Law Number 5 of 1960 establishing Basic Regulations on Agrarian Principles (commonly known as the LoGA). Also, the region directly overhead (Muhammad et al., 2018). Property rights, cultivation rights, building rights, usage rights, lease rights, land clearing rights, forest product collection rights, and other rights not expressly granted by law are all examples of the types of land rights that can be regulated. The aforementioned permanent and temporary protections are guaranteed by the law (Sappe et al., 2021). Property registration in Indonesia is intended to establish legal clarity (Rechts cadastral) regarding land rights and legal protection of land ownership. By registering the land, the landowner will receive a document of proof of rights as evidence of ownership of data whose legal certainty is assured. A land certificate is the document that PP 10 of 1961 and PP 24 of 1997 refer to as evidence of ownership. (Silviana, 2021).

As long as the physical data and legal data are consistent with the data contained in the letter of measurement and the book of land rights, the certificate serves as a solid means of proof for the biological data and legal data it contains (Nae, 2013). The land certificate is the final piece of paperwork needed to prove ownership of a piece of land. The Land Registration Agency in Indonesia did not come into existence until 1960, when Government Regulation No. 10 of 1961 was adopted. This institution was founded in response to a directive from the LoGA stating that one of the goals of the issuance of the UUPA (Law No. 5 of 1960 on Agrarian Principles) was to offer legal certainty guarantees for landowners in Indonesia. Article 19 of the UUPA specifies that legal certainty will be ensured by instituting land registration across Indonesia (Hasanah, 2012).

This technological period has been dubbed the "Digital Disruption Era." The shift from the analog to the digital world has been accelerated by the phenomenon of digital disruption. Science and technology have permeated the land administration sector with the introduction of electronic land registration. The results of land registration are no longer produced in books but rather as data and computerized information (Surdin, 2016). This switch to electronic certificates facilitates a paperless workplace in the digital age, as they are easily managed and available at any time (Febrianti, 2021).

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To further facilitate effective land registration, particularly in the present epidemic era, electronic land certificates were introduced. This change minimizes the need for end-users and service providers to physically interact. And it is anticipated that land registration's value would rise as a result of digitization, which will in turn boost the Ease of Doing Business (EoDB) (Wiryan, 2021). However, the legal status of this electronic land certificate as security and evidence is called into question. This paper's focus is on using electronic certificates to establish legal rights to property. There is a wealth of literature on the subject of providing legal certainty and establishing ownership of property rights, but this paper differs from the rest by advocating for the use of electronic certificates, a relatively recent government legislation.

II. Research Method

Normative research involves looking for rules or regulations that pertain to the issues at hand, and its methodology typically entails using secondary sources such as library books and databases as its primary source of information (Sonata, 2014). Analysis of legal materials is conducted in this study with qualitative and quantitative methods, with the law as the subject. The law is viewed as a societal norm or rule that serves as a guide for everyone's behavior; thus, normative legal research focuses on the following: an inventory of positive law; legal principles and doctrines; identification of unwritten law or customary law; legal systematics; the level of legal synchronization; legal comparison; and the effectiveness of the law. A qualitative research approach is an interactive method, which emphasizes the search for meaning behind the empiricism of social reality in order to achieve a profound understanding of social reality. This strategy will generate data in the form of statements or descriptive facts regarding the subject of research. Mills and Huberman (2014)

The sources of legal materials in this study include primary legal materials and secondary legal materials, primary legal materials in the form of legislation, where the reference used in this study is UUPA, Law Number 11 of 2008 Regarding Information and Electronic Transactions, Government Regulation Number 24 of 1997 Regarding Land Registration, and Ministerial Regulation of ATR/BPN Number 1 of 2021 Regarding Electronic Certificates and Other Related Regulations. The secondary legal materials utilized for this study include textbooks, scientific journals, and non-legal literature pertinent to the research issue. The strategy for collecting legal materials is library research supplemented with a systematic interview technique with resource persons who are knowledgeable about the subject of the study. Data analysis procedures with deductive logic or legal processing materials are used to analyze legal materials by discussing a broad subject and producing a more particular conclusion.

III. Result and Discussion

3.1 Application of Electronic Certificates as Proof of Land Tenure

1960's UUPA Number 5 outlines the regulation of land rights in agrarian legislation. The four types of land rights are property, use, building, and use. The position of land rights to fully govern and hold property for an extended period of time is mentioned in Article 20 paragraph (1) of the Basic Agrarian Law, which states, "Property rights are the most comprehensive, strongest, and hereditary rights that landowners can possess" (Sutedi, 2007). To promote the power of complete rights to control and possess land, the government supports the implementation of GR Number 24 of 1997 concerning Registration by issuing certificates that serve as proof obtained through legal or legal procedures.

Land certificates in the form of physical documents or what are known as analogue certificates, in their development up until now, there have been a number of issues, including the fact that, despite being recognized by the LoGA, these certificates do not guarantee legal certainty for their owners as long as there are other parties willing to challenge them. One can make a claim for land ownership in the General Court against the party whose name appears on the certificate in civil court, against the Head of the BPN/Head of the Land Office in question in the State Administrative Court, or against the technical administration of certificate issuing (Purwaningdyah & Wahyudi, 2014).

Thus, it cannot be denied that the certificate of land rights, which is the result of various government programs, still leaves a gap in terms of guaranteeing legal certainty that has the potential to harm the community, as in several cases involving the forgery of land certificates, the issuance of dual land certificates, and the issuance of certificates of land certificates. Land overlap and the pervasive land mafia are the root causes of several land conflicts that ultimately hurt the community. This means that the land rights certificate no longer ensures the legal security of the community (Arisaputra, 2021). Moreover, this is a note that physical land certificates do not ensure legal certainty.

Land Registration Government Regulation No. 10 of 1961 was the impetus for the establishment of the Indonesian land registration agency, as is common knowledge. The Belaid is a practical application of the provisions of Article 19 of the UUPA. Land registration for the first time and the maintenance of land registration data constitute the implementation of land registration. According to PP 10 of 1961 and PP 24 of 1997, land registration is the initial land registration for parcels of land that have never been registered. In the meantime, land registration is the maintenance of land registration data, with the goal of ensuring that the data kept in the Land Office corresponds to the data on the ground (i.e., is accurate). (Article 19 paragraph 2 letter c) The result of land registration activities is the issuance of proof of rights documents that serve as reliable evidence. Certificates contain a copy of the Land Book and a Letter of Measurement, sewed together with a cover paper whose shape is defined by the Minister (Article 13 paragraph 3 of PP No. 10 of 1961). PP 24 of 1997 states that certificates of land rights, HPL, and land waqf may be a single document providing the necessary physical and legal information. Nonetheless, the only analog certificate that is still valid at this time is the land certificate as specified in PP 10 of 1961. (Silviana, 2021).

Along with the rapid development of the times in the current era of globalization, which is characterized by the advancement of science, technology, and information, numerous areas of the government sector must, of course, undergo modifications. There have been laws and regulations that have served as the basis for accommodating these changes, such as the Law of the Republic of Indonesia Number 19 of 2016 concerning Electronic Information and Transactions, whose technical rules are subsequently regulated by the Government Regulation of the Republic of Indonesia Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions. In Article 1 Numbers 4 and 5 of this regulation, the operator of an electronic system in the public realm that is a government agency or an institution designated by the government agency is controlled. State administration based on an electronic system can therefore be used to different facets of the government sector, including the land sector, and can even be explicitly applied to the land registration system's mechanism and outputs. (Alimuddin, 2021).

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 then establishes the mechanism for the land registration system based on an electronic system. Electronic documents are the form of output for this system. According to Article 1 Number 2 of the Ministerial Regulation, "electronic documents" are any "written, spoken, pictured, mapped, designed, photographed, or the like, letters, signs, numbers, access codes, symbols, or performance data that is created, forwarded, sent, received, or stored in analog, digital, electromagnetic, optical, or similar forms, and which can be viewed, displayed, and/or heard through a computer or Electronic System." The relevant electronic document here is an electronic certificate (Agustina, 2021).

This law will have a direct impact on all future and existing land parcels that are recorded. According to Article 12 of this Government Regulation, a digital certificate is issued upon electronic registration of land whose rights have been determined to be land rights, management rights, ownership rights to flat units, mortgage rights, or waqf land. Following this, the digital certificates and access to the digital certificates in the digital system are delivered to the nazhir as proof of their rightful ownership of the rights. However, there are situations where this electronic certificate would not be issued, such as when the physical data or juridical data is either lacking or contested. The certificate for the registered land will be replaced with an electronic certificate through an application for land registration data maintenance services if the physical data and juridical data in the land book and certificate match those in the electronic system.

The computerized land registration system already has a solid and complete legal foundation at the legislative level. But the notion of executing a regulation extends beyond the specifics and breadth of the law itself, and takes into account the preparedness of the many parties involved. People who want to register their land or get a new land certificate, and the Ministry of ATR/BPN, who is in charge of setting up the computerized land registration system. With the enactment of the Ministerial Rule on e-certificates on January 12, 2021, the Ministry of ATR/BPN and other print and electronic media have begun reporting and disseminating information about this regulation.

3.2 Legal Protection for the Application of Electronic Certificates

To the extent that it cannot be proven otherwise, the physical data and data juridical matters stated in the certificate must be accepted as accurate data when carrying out daily legal actions and when litigating in court. This is because the certificate is a letter of proof of rights that follows the data contained in the letter of measurement and the land book in question.

The publication system in the administration of land registration is concerned with the degree to which individuals can rely on the veracity of the information supplied by the State as a result of land registration operations. What are the legal ramifications if the person carrying out legal actions with the registered land uses the data and it turns out that the data is inaccurate?

If the certificate is issued, the rules and regulations safeguard the certificate holder. However, the physical and legal information on the land certificate is not guaranteed to be accurate, although it must be recognized by the court in the absence of evidence to the contrary. The rules of Government Regulation No. 24 of 1997, Article 32, Paragraph 2, make it possible for other parties who believe they share the same objective to register an objection to the issuing of a certificate, which states that:

"If a certificate has been issued legally in the name of the person or legal entity who acquired the land in good faith and controlled it, then the other party who feels that he has rights to the land can no longer demand the implementation of the said right if, within the 5 (five) years since the issuance of the certificate, he has not submitted a written objection to the certificate holder and the Head of the Land Office concerned or has not filed a lawsuit to the court regarding the control of the land or the issuance of the certificate.

In Article 32 paragraph (2) of Government Regulation Number 24 of 1997, Legal protection for land certificate holders can be realized if it meets the following elements:

- a. The certificate is issued lawfully in the name of an individual or legal entity. A certificate issued by the Regency/City Land Office for the purpose of land registration in the form of land rights is the definition of in the name of a person or legal entity.

- b. Acquiring land in good faith. The goal of the principle of good faith is to safeguard individuals who obtain a legal right in good faith from a person who is suspected of being the legal right holder for that right.
- c. The land is under control. The land rights are physically controlled and utilized by the holder of the land rights or by other individuals or legal entities who are authorized to do so.
- d. No one has made a written objection to the certificate holder and the Head of the local Regency/City Land Office or filed a lawsuit with the court within five (5) years of the certificate's issuance disputing land tenure or certificate issuance.

The owner of the land certificate as the holder of property rights to the land, cannot be contested by anyone after the land certificate is five years old; only at the age of under five years is the other party allowed to sue the ownership or control of the land right of the certificate holder, if indeed have evidence that is also legally enforceable at the same level, legal certainty regarding this matter can avoid the worries of land certificate holders who are vulnerable to interference from other parties at any time.

The electronic land registration service has been designed since the enactment of PP No. 24 of 1997. Article 35 paragraph (5), (6) and (7) stipulates that: "Gradually land registration data is stored and presented using electronic equipment and micro-film. Records of documents produced by electronic means or microfilm have the power of proof after being signed and affixed with an official seal by the Head of the Land Office concerned. The form and method of storing, presenting and deleting the documents referred to in paragraphs (1) and (2) of this Article 35, as well as the method of storing and presenting land registration data using electronic devices and microfilm, shall be determined by the Minister". This means that BPN has started to prepare itself to provide electronic-based land registration services.

When it comes to the process of proving civil claims, the role of electronic evidence is not limited to only being a matter of whether or not it is recognized legally. The process of proof in criminal and civil proceedings can offer protection and legal certainty between the parties through the recognition of the position and existence of electronic evidence. This is possible because the process of proof in both types of proceedings acknowledges the existence and position of electronic evidence.

Electronic Documents are governed by the Criminal Procedure Code as documentary evidence. The legal criteria for electronic evidence are outlined in Article 5 paragraph 4 of the ITE Law, which states that Electronic Information or Documents are not required-to-be-in-written-form documents or letters³⁶. In contrast, material requirements are governed by Article 6, paragraph 15. Article 16 of the ITE Law, which addresses the admissibility of electronic evidence in court, stipulates that the availability, integrity, and authenticity of any electronic information or document must be ensured. The legal aspect of proving the Electronic Land Certificate poses no difficulty.

Regarding the concern that occurs in the community, according to the author, the Ministry of ATR/BPN has prepared anticipation of data leakage through collaboration with BSSN. The electronic land certificate will enforce an electronic signature and use cryptographic encryption technology guaranteed by the National Cyber and Crypto Agency (BSSN). BSSN provides security support for data and information exchange by utilizing Electronic Certificates to ensure authentication, integrity and denial of data exchanged. Electronic certificates provide guarantees for data authentication because digital certificates can show the owner of the certificate in a document directly, then integrity because the electronic certificate guarantees data integrity by seeing whether there is a change in the document that has been signed, and anti-denial because it can be directly proven when the signatory and can deny the falsification of data integrity.

The digital signature that will be used in the electronic certificate serves to secure a document from unauthorized modifications to avoid the duplication process that can change the digital certificate from the original certificate. Digital signatures work by summarizing the contents of the secured document, then encoded with a cryptographic algorithm, and the results are inserted into the document. So that digital documents and digital signatures will always exist together in one file.

Electronic information or electronic documents that are given a digital signature if there is a change, even if it is only a change of one letter in the electronic document, the digital signature will be damaged and recognized by the Electronic Certification Center (BSE) as a fake document. An electronic land certificate, according to Virgo Eresta Jaya, Head of the Center for Data and Information on Land, Spatial Planning, Sustainable Food Agricultural Land (LP2B) that with, an electronic land certificate, will increase security because electronically, it can avoid counterfeiting and cannot be denied and falsified. Electronic certificates will apply an electronic signature; when digital signing is done, cryptographic operations embed the digital certificate and the document to be signed in a unique code (hashcode).

There is a misconception in paragraph 3 of Article 16 of the Ministerial Regulation of ATR/BPN Number 1 of 2021 pertaining to Electronic Certificates; in this situation, the analogue certificate will not be revoked. The full of paragraph 3 is read concurrently with paragraphs 1, 2, and 4. This signifies that the Head of the Land Office will withdraw the analog certificate if the certificate holder (landowner) has converted the analog certificate to a -El certificate. With the issuing of the Ministerial Regulation, the Head of the Regency/City Land Office is not authorized to immediately revoke the analog certificate. Analogue certificates will remain valid until they are converted into electronic format. A stamp will be placed on certificates that have been converted to electronic certificates to indicate that they have been converted to electronic documents.

IV. Conclusion

The development of all-digital, more effective and efficient, and more modern information and communication technology causes changes in society; naturally, the legal needs of the community also desire a change, especially in the land sector, and this cannot be prevented by the Minister of Agrarian Affairs and Spatial Planning/Head of the Land Agency's Regulation. Republic of Indonesia Law Number 1 of 2021 pertaining to electronic certifications. The National Land Agency offered an electronic system for the storage of land certificates, which had previously existed in the form of paper papers (letters). This shift generates issues in the community as to whether the new land certificate has the same legal force as the prior one, hence presenting numerous legal questions regarding the use of electronic certificates as evidence of land ownership rights. The study determined that the legal force of electronic certificates, both in electronic and printed data form, is valid and has binding legal force in accordance with the Indonesian procedural legislation. As a form of legal protection for holders of electronic land certificates in terms of proving the Electronic Land Certificate, there is no issue because electronic land certificates are evidence of electronic ownership recognized by the Electronic Information and Transaction Law (UU ITE), particularly those regulated by Article 6. The legitimacy is not an issue, especially since it was tightened in Article 5 of Ministerial Regulation ATR/BPN-1 of 2021. For security purposes, the Ministry of ATR/BPN has collaborated with BSSN to anticipate data loss.

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