

The Issuance of Land Certificates from an Electronic System

Anisya Nur Setyani^{*)}, Dahniarti Hasana Dahnan^{**)} & Siti Ummu Adillah^{***)}

^{*)} Faculty of Law, Sultan Agung Islamic University (UNISSULA), E-mail:
nisyaa63@gmail.com

^{**)} Faculty of Law, Sultan Agung Islamic University (UNISSULA), E-mail:
dahniarti@unissula.ac.id

^{***)} Faculty of Law, Sultan Agung Islamic University (UNISSULA), E-mail:
ummu@unissula.ac.id

Abstract. *The Minister of Agrarian and Spatial Planning (ATR) / National Land Agency (BPN) launched the Regulation Number 1 of 2021 concerning Electronic Certificates which states that electronic certificates will be issued through an electronic system in the form of an electronic document. The significant difference between analog certificates and electronic certificates is the physical form, type of information and also the method of securing it. This study aims to determine and analyze the process of the Ministry of Agrarian Spatial Planning/National Land Agency in issuing electronic-based land certificates, to find out and analyze legal protection for the people who own electronic certificates as authentic evidence, to find out and analyze the obstacles that arise in the issuance of electronic land certificates and the resolution of these obstacles. This study uses a sociological juridical approach with descriptive analytical research specifications, the types of data in this study are primary data, secondary data, and tertiary data. Based on the results of research and discussion that the Ministerial Regulation concerning electronic certificates states that all data, information and/or electronic documents will be stored in an electronic system database that creates legal certainty. But in this case, considering the theory of preventive legal protection which has the aim of preventing disputes. This Electronic Certificate puts a lot of concern in it regarding the possibility of disputes that will occur, so it still needs to be reconsidered regarding the refutation of the Regulation of the Minister of Agrarian and Spatial Planning (ATR) / National Land Agency (BPN) No. 1 of 2021 concerning Electronic Certificates.*

Keywords: Certainty; Certificate; Electronic; Protection.

1. Introduction

Land is an inseparable part of human life, because most human activities are on the ground, including housing. Land as an element forming human life and other

living things, land is not only a place to live and farm, but can also be used as collateral to get bank loans for buying and selling and renting purposes.¹

Given the increasing need for land for the benefit of the community, while the land in Indonesia does not increase, a regulation is needed to ensure legal certainty and protection for land rights holders. With the issuance of Act No. 5 of 1960 concerning Basic Agrarian Regulations or better known as the Basic Agrarian Law or hereinafter referred to as UUPA and Government Regulation Number 10 of 1961 in conjunction with Government Regulation Number 24 of 1997 concerning Land Registration.

The objectives of land registration according to Article 3 of Government Regulation Number 24 of 1997 are:

- To provide legal certainty and legal protection to holders of rights to a parcel of land, apartment units and other registered rights so that they can easily prove themselves as holders of the rights in question.
- To provide information to interested parties, including the government so that they can easily prove themselves as holders of the rights concerned.
- For the implementation of orderly land administration.²

So if there is a change in the data in the certificate, the right owner is obliged to report it to the Land Office to make adjustments to the data so that it always produces accurate land data. According to Bachtiar Effendi who argues about the Basic Agrarian Law and the embodiment of legal certainty of land ownership that: "The Basic Agrarian Law (UUPA) with its implementing regulations aims to realize and guarantee legal certainty over land rights throughout Indonesia. If we relate it to the government's efforts in the context of reorganizing the use of control and ownership of land, then land registration is an important means to realize legal certainty over land rights which has been implemented in Indonesia since 1961 until today.³ Regarding the importance of land registration, Bachsan Mustafa is of the opinion that land registration will produce land certificates, which have the meaning of providing legal certainty, because the law can clearly identify both the identity of the right holder and the identity of the land. So if there is a violation of property rights on land, it can take action against the violator based on his property rights.⁴

¹Sangsun, Florianus SP. (2007). *Tata Cara Mengurus Sertifikat Tanah, Cetakan Ketiga*, Jakarta : Visimedia, p.1.

²Supardi. (2007). *Hukum Agraria*, Jakarta, p.165

³Effendi, Bachtiar. (1993). *Pendaftaran Tanah di Indonesia dan Peraturan Pelaksanaannya*, Bandung : Alumni, p 5.

⁴Bachsan, Mustafa. (1984). *Hukum Agraria Dalam Prespektif*, Bandung : Remaja Karya, p. 58

Based on the provisions of Article 1 Paragraph (1) Government Regulation No. 24 of 1997 the definition of land registration is: A series of activities carried out continuously, continuously and regularly, including collection, processing, bookkeeping and presentation and maintenance of physical data and juridical data, in the form of maps and lists, regarding land parcels and apartment units, including the granting of certificates as proof of rights for land parcels for which rights already exist and property rights over flat units as well as certain rights that encumber them.⁵ However, the development of an increasingly advanced and modern era where all community activities are carried out online. The digital era at this time is called the era of digital disruption. Digital disruption is a massive change that marks an era from being offline to being online.

The development of science and technology has also penetrated the land administration with the implementation of land registration which can be done electronically and the results of the land registration are in the form of data, electronic information, no longer in the form of books. This electronic certificate transformation supports the paperless office culture in the digital era, becomes easy to maintain and manage, can be accessed anytime and anywhere.⁶ In this case, the government and public services also follow the current developments, such as using an electronic system that is connected quickly, easily and effectively in accordance with the provisions in Government Regulation (PP) Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions. Electronic System is a series of electronic devices and procedures that function to prepare, collect, process, analyze, store, display, announce, transmit, and disseminate Electronic Information.

Electronic certificates are systems in the form of data that are compiled into one base at the National Land Agency (BPN) throughout Indonesia, which is currently in the spotlight related to security, which is a big concern from the public for systems that are easily cracked or compromised. Hacked, by hackers according to the cyber data of the Criminal Investigation Police, it was recorded that in 2020 as many as 1,300 government accounts and state institutions were hacked and the most dangerous are the types and forms of institutions that have been hacked, not only government institutions, platforms such as Tokopedia and Telkomsel have also been hacked.⁷ To maintain the security of the certificate itself, considering the dangers and risks of natural disasters are very likely to occur in parts of Indonesia, especially related to data that must be of special attention from the Government, fear from the public ranging from lost data to

⁵Soedjono and H.Abdurrahman. (tt.). *Prosedur Pendaftaran Tanah*, Jakarta : Rineka Cipta, p. 32.

⁶ Sugianto, Qisthi Fauziyyah. 2019. *Peluang dan Tantangan Calon Notaris dalam Menghadapi Perkembangan Dirupsi Era Digital*, Jurnal Notarius Volume 12 Nomor : 657-658.

⁷Permatasari, Anjani Nur. 2020. *1.300 Akun Lembaga Pemerintah Di-Hack, Pelaku Minta Uang Tebusan Jutaan Rupiah*, <https://www.kompas.tv/article/92195/1-300-akun-lembaga-pemerintah-di-hack-pelaku-minta-uang-tebusan-jutaan-rupiah>, accessed on 06 January 2022, At 11.00 WIB.

the amount of land that can be changed if it can be hacked all related to a system that is still doubtful for society in general.⁸

Land issues that have been certified still exist and arise, such as size discrepancies, overlaps, litigation in court, and also the emergence of multiple certificates, namely a plot of land registered in two certificates which are officially issued by the Regency/City Land Office. . Cases of dual land rights certificates can occur for several reasons, including the following:⁹

- When measurements or research in the field are carried out, the applicant intentionally shows the wrong location of the land and the boundaries of the land;
- There is a letter of evidence or acknowledgment of rights which is proven to contain intentional, untruth, falsehood and/or is no longer valid;
- For the area concerned, the land registration map is not yet available;
- Multiple certificates can also occur backed up due to an administration error.

The UUPA statement that certificates as land registration products are strong evidence shows that if there is a land dispute, it must be resolved in the general court, namely the district court which is a place where a person can take legal efforts to fight for or claim his rights by submitting evidence that he has. The disputing parties or anyone who questions the veracity of a certificate can submit it to the court, if it can be proven that the untruth of the land rights, the certificate can be canceled, for land ownership disputes are handled by the general court while objections to the issuance of certificates issued by the Land Office submitted to the State Administrative Court (PTUN),¹⁰

2. Research Methods

The approach method used is juridical-sociological. In this study, the method is used to examine the theories of agrarian law and legislation regarding agrarian law to analyze related to the object under study. The research specification used is descriptive analysis. This descriptive research is intended for primary data and also secondary data related to the enforcement of the notary code of ethics. Analytical descriptive research is research conducted by collecting actual

⁸Fadhilah. 2020. 1.300 Akun Pemerintah dan Lembaga Negara Di-Hack, <https://www.kompas.tv/article/92028/1-300-akun-pemerintah-dan-lembaga-negara-di-hack>, accessed on 06 January 2022, At 11.00 WIB.

⁹ Syah, Mudakir Iskandar. (2019), *Panduan Mengurus Sertifikat & Penyelesaian Sengketa Tanah*, Jakarta: Bhuana Ilmu Populer, p.160.

¹⁰ Syarief, Elza. (2014). *Pensertifikatan Tanah Bekas Hak Eigendom, Cet. Ke.1*. Jakarta: Kepustakaan Populer Gramedia, p.75-76

information in detail that describes the existing symptoms, identifying problems and examining the conditions of the applicable criminal acts.¹¹

3. Results and Discussion

3.1. The process of the Ministry of Agrarian and Spatial Planning (ATR)/National Land Agency (BPN) in Issuing Electronic-Based Land Certificates

The land registration system based on a regulation issued by the government, namely Government Regulation No. 24 of 1997 concerning Land Registration, aims to ensure legal certainty because thus the land registration process must be carefully considered in accordance with the legislation which is the reference in the registration process for each parcel of land in Indonesia. Indonesia is known that there are several ways or processes for registering land in this case to achieve orderly administration in the field of national land and then to ensure legal certainty.

In this digital era, the Government issued a Regulation of the Minister of Agrarian and Spatial Planning (ATR) / the National Land Agency (BPN) issued a regulation on digitization on land certificate to be applied in Indonesia recently. This rule is set forth in the Regulation of the Minister of Agrarian and Spatial Planning (ATR)/National Land Agency (BPN) Number 1 of 2021 concerning Electronic Certificate. In this Ministerial Regulation, it is explained that electronic land certificates will replace physical land certificates, including replacement of land books, letters of measurement/plan drawings. Each regional office will later be tasked with withdrawing certificates to be combined with the land book and stored as a document at the land office. The warkah in question is media transfer (scan) and stored in the database.¹²

In the results of an interview with Mr. Hery Widjajanto as the Board of Directors for determining land rights and registration at the Demak Regency Land Office, he said that the electronic certificate at the Demak Regency Land Office had not yet been fully carried out, some or still in the trial phase because not all Land Offices had used the electronic certificate system but correspondence is electronic based. At the time this Ministerial Regulation comes into effect, land applications received by the Land Office that have been designated as an office

¹¹Winarno Surachmat, Introduction to Scientific Methods, Tasito:Bandung, 1986 p 12

¹²Okay Finance, 2021. Revealed! This is the Reason for Electronic Land Certificates, <https://economy.okezone.com/read/2021/02/04/470/2356263/terunjuk-ini-alasan-sertifikat-tanah-elektronik>, accessed on January 6, 2022, 12.00 WIB .

that carries out electronic land registration will be processed based on the provisions prior to the enactment of this Ministerial Regulation.¹³

Besides that, the existing regulations explain in detail how the procedure for registering land at the Land Office of Demak Regency to obtain land certificates, thus there are several land registration procedures and the process of issuing certificates in accordance with Government Regulation No. 24 of 1997, namely land registration for first time to get land certificate¹⁴. In the process of registering a plot of land owned for the first time, of course, it must be based on what is determined and with a written procedure where this is the beginning of the data collection process based on the regulations regarding land registration, namely Article (12) Government Regulation no. 24 of 1997 concerning Land Registration mentions several procedures for registering Land for the first time including the following: activities and processing of physical data, proof of rights and their bookkeeping, issuance of certificates, presentation of physical and juridical data, and storage of general lists and documents.

The affirmation of the definition of land registration, the principles and objectives of the implementation of land registration in this government regulation is a series of activities carried out by the government continuously, continuously and regularly, through the collection, management of books and the presentation and maintenance of physical data and juridical data in the form of maps and lists, regarding plots of land and units of flats, including the provision of proof of title.¹⁵

Regarding the explanation of land registration for the issuance of land certificates above, Mr. Hery Widjajanto stated that electronic issuance is in accordance with the provisions of the Regulation of the Minister of Agrarian and Spatial Planning (ATR)/National Land Agency (BPN) No. 1 of 2021 concerning Electronic Certificates, electronic land registration is carried out in stages and determined by the minister by considering the readiness of infrastructure, facilities and infrastructure as well as technological readiness and to reduce the number of disputes in the land sector nationally, especially to provide legal certainty for rights holders on land for the realization of orderly administration in the field of land nationally.¹⁶

Electronic certificates are expected to be effective in national land management which can minimize the duplication of certificates, forgery and illegal land

¹³The results of an interview with Hery Widjajanto as the Director of Land Rights Determination and Registration at the Demak Regency Land Office. On March 14, 2022.

¹⁴Ibid.

¹⁵Hakim, Arif Rahman and Idrus, Muammar Alay. 2021. "Prosedur Penerbitan Sertifikat Elektronik Sebagai Bukti Autentik Penguasaan Hak Atas Tanah", Jurnal Fakultas Hukum Universitas Gunung Rinjani, Volume 3, Nomor 1, November 2021. p.23

¹⁶Ibid.

transactions by the land mafia and also reduce the risk of loss of fire, rain and theft of physical documents.¹⁷

Electronic land registration has several stages in it in accordance with applicable laws and regulations which will currently replace analog land certificates according to existing procedures, in this case described in Chapter II of the Regulation of the Minister of Agrarian Spatial Planning (ATR)/National Land Agency. (BPN) No. 1 of 2021 Article (2) regarding electronic certificates or e-Certificates, including the following:

- In registering the land owned can be done electronically so that it is easier.
- In carrying out the registration of land owned by the electronic method as referred to in paragraph (1), these include:
 - First time registering the land owned; and
 - Maintain data related to land registration.
- As referred to in paragraph (2), it is carried out based on Electronics in the system.
- It is carried out in a graded manner regarding registration, this matter has been regulated by the Minister.¹⁸

Electronic Documents issued through the Electronic System as referred to in Paragraph (3) letter a are legalized using Electronic Signatures in accordance with the provisions of laws and regulations. Electronic documents resulting from media transfer as referred to in Paragraph (3) letter b are validated by authorized officials or appointed officials and digitally stamped through the Electronic System. Electronic Documents as referred to in print are valid legal evidence and an extension of valid evidence in accordance with the applicable procedural law in Indonesia. For verification purposes, Electronic Documents can be accessed through the Electronic System.

Then for the issuance of electronic certificates for the first time in accordance with the Regulation of the Minister of Agrarian and Spatial Planning (ATR) / National Land Agency (BPN) No. 1 of 2021 Chapter III Concerning the Issuance of Electronic Certificates for the first time land registration activities for land that have not been registered include the collection and processing of physical data, proof of rights and bookkeeping, issuance of certificates, presentation of physical data and juridical data, as well as storage of general lists and documents , implemented through the Electronic System. The results of the activities of collecting and processing physical data in the form of Electronic Documents, consisting of: measuring drawings, maps of land parcels or spatial maps, letters of measurement, drawings of plans for flats or letters of spatial measurement,

¹⁷Ibid.

¹⁸Ibid, p. 12.

and other documents, which are the result of collecting and processing physical data.

In accordance with the explanation above, it is clear that the electronic land registration system is a new thing and must be socialized first about the electronic system on display, inform, deliver, and share electronic information.¹⁹ In this case, there is a very significant difference between analogue certificates and electronic certificates starting from the registration process to the process of issuing Electronic Certificates, especially in the right to affix the initials contained in Electronic Certificates using Electronic initials in accordance with the provisions of Article 1 paragraph (5) concerning the meaning of Signs. Electronic Hand, which is an electronic initial, namely electronic information that is attached to and related to other information electronically and is used as a medium for confirming and ratifying.²⁰ To make it easier, the author is given an overview by the speakers to describe as follows:

SERTIPIKAT TANAH ELEKTRONIK	PERBEDAAN	SERTIPIKAT TANAH ANALOG
Menggunakan Hashcode Kode unik dokumen elektronik yang di-generasi oleh sistem	Kode Dokumen	Kode Blanko Nomor seri unik gabungan huruf dan angka
Menggunakan QR Code Berisi sajian yang memudahkan masyarakat mengakses langsung dokumen elektronik	Scan QR Code	Tidak menggunakan QR Code
Single Identity Hanya menggunakan satu nomor yaitu Nomor Identifikasi Bidang (NIB)	Nomor Identitas	Menggunakan banyak Nomor Nomor sak, Nomor Surat ukur, Nomor Identifikasi Bidang, Nomor Peta Bidang
Menyatakan Aspek Right, Restriction, Responsibility Keteraturan kewajiban dan larangan diutamakan	Ketentuan Kewajiban & Larangan	Dicatat pada kolom petunjuk Pencatatan ketentuan ini tidak seragam tergantung Kantor Pertanahan masing-masing
Menggunakan Tanda Tangan Elektronik Tidak dapat dipalsukan	Tanda Tangan	Menggunakan Tanda Tangan Manual Bisa dipalsukan
Dokumen elektronik Informasi yang diberikan padat dan ringkas	Bentuk Dokumen	Berbasis Kertas Bersama blanko dan berklembar-klembar

Figure 1. Differences between Electronic Certificates and Analog Certificates

Source: Ministry of ATR/BPN

As stated in Article 3 of the Regulation of the Minister of Agrarian and Spatial Planning (ATR)/National Land Agency (BPN) No. 1 of 2021 concerning Electronic Certificates, namely:²¹

¹⁹Ibid.

²⁰Ibid.

²¹Government Regulation No. 24 of 1997 concerning Land Registration Article 3.

- After registering the land with the electronic method, it produces data, as well as information and documents in the form of Electronic as well.
- Data and information as well as electronic documents as referred to in paragraph 1 are data on ownership, material and juridical data regarding land parcels that are legally recognized and recognized by law.
- The storage of such data and information as well as documents is in the database of the Electronic System used.

3.2. Legal Protection for Communities Owners of Electronic Certificates as Authentic Evidence

According to Article 1 point (8) Regulation of the Minister of ATR/BPN Number 1 of 2021, it is explained about an electronic certificate, which is a written property right, issued using an electronic system and in the form of a systematic document. Regarding the power of electronic certificates, a similar explanation is also explained in Act No. 11 of 2008 concerning Information and Electronic Transactions in article 5 paragraph (2) is a valid proof of ownership based on legal procedural provisions in Indonesia.²²

Explanation regarding Electronic Certificates:²³

- The logo of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency is in line with the Garuda symbol.
- The type of right will adjust the land rights to be granted. The Field Identification Number (NIB) is a single ID that is the reference for all land registration activities.
- Unique code / Hashcode is the code for the published electronic document, which is connected with the issue of the electronic document issuance.
- QRCode to find out the data recorded in electronic documents, one can access it directly by scanning the QR code using an application provided by the National Land Agency.
- Description of writing Certificate Title.
- The pattern of wavy fine lines as the background for the electronic certificate shows a pattern of continuous service. The ministry logo watermark is placed in the middle. Plus a red writing pattern on the left side of the document.
- *Right, Restriction and Responsibility* included in the certificate.

²²Regulation of the Minister of Agrarian Spatial Planning/Land Agency No.1 of 2021 Article 1.

²³Abdillah. 2021. *Special Content: Sertifikat Tanah Elektronik Masih Belum Meyakinkan Publik, Ada Apa?* <https://www.liputan6.com/news/read/4481425/special-content-sertifikat-tanah-elektronik-masih-belum-meyakinkan-publik-ada-apa>, accessed on 06 January 2022, At 11.00 WIB

- The image of the plot of land is accompanied by a description of the QR Code measuring letter to the electronic measuring letter.
- Attention contains knowledge regarding the provisions of electronic documents to certificate holders in the form of electronic documents.
- The symbol of BSR as a provider of TTE which is an agency that administers electronic signatures. Electronic signatures are introduced in a classic modern style sure in the form of a signature specimen equipped with a Land Office stamp.

The definition of a deed as valid evidence in proving an electronic certificate, what is meant by a deed is a writing that is made intentionally to be used as evidence of an event that forms the basis of a legal relationship right (commitment) and is signed by the maker, then the important element in it is intentional to make it as evidence and the existence of a signature, of course at this time using an electronic signature. In electronic certificates known as electronic signatures or (digital signatures) are substitutes for manual signatures that are electronic and have the same function as manual signatures.²⁴

In the current electronic certificate issuance procedure, it still refers to the regulations governing the analogue certificate issuance procedure and the application of land registration using the electronic system is the second alternative in the land registration process in Indonesia and is carried out voluntarily so that land registration with this electronic system judged to be able to reduce the number of damage and loss of certificates, especially to reduce disputes in court and for its strength, this electronic certificate is legal evidence in accordance with article 8 article 5 paragraph (2) of the 2008 law on electronic transaction information. Electronic Documents is an extension of valid evidence.²⁵

4. Conclusion

Electronic Land Certificate is an innovative service for the future land sector. With this, the Ministry of ATR/BPN must provide mature infrastructure so that electronic land certificates can be immediately launched in all Land Offices without any problems. The application of Electronic Land Certificates in land registration services to improve public services, so that goals can be accepted by all circles of society, socialization of electronic land certificates must always be improved to raise public awareness of the functions and benefits of electronic land certificates as evidence of land ownership rights.

²⁴Arif Rahman Hakim, Muammar Alay Idrus, Op Cit, p. 26.

²⁵Silviana, Ana. 2021. *Urgensi Sertipikat Tanah Elektronik Dalam Sistem Hukum Pendaftaran Tanah di Indonesia*, Jurnal Hukum, Aministrative Law & Governance Journal. Volume 4 Issue 1, March 2021.

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