

The Role and Authorities of Making Land Deed Officials in Electronic Land Certification

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Abstract. *This study aims to identify and analyze the roles and authorities of Land Deed Officials in electronic land certification at the Kendari BPN office and to identify and analyze the obstacles faced by Land Deed Making Officials in electronic land registration at the Kendari BPN office as well as solutions to these obstacles. The research approach method used in this thesis is a sociological juridical legal research method. The specification of this research uses descriptive analysis. The type of data used in this study is primary data which includes the 1945 Constitution; ATR/BPN Regulation No. 1 of 2021; ATR/BPN Regulation No. 16 of 2021; ATR/BPN Regulation No. 2 of 2018; PP No.2 of 2016, as well as secondary data containing books and other supporting documents. Collecting research data using interview techniques and documents or library materials. The data analysis method used is qualitative analysis. The results of the study show that the roles and authorities which are part of the duties of the PPAT in implementing Electronic Land Certification, the PPAT in Kendari City have carried out their obligations in accordance with their duties and functions. The PPAT of Kendari City supports electronic land certificates. The obstacle is that the files collected by the applicant are incomplete and do not meet the specified requirements. Then with the electronic system, a process of adjustment and outreach to the community is needed because there are many pros and cons questions that arise in the heads of the community regarding changes to the land registration system electronically.*

Keywords: Authority; Certificate; Electronic.

1. Introduction

Land is a resource that is needed at this time. Land is one of the basic needs in human production activities, both as a place and as a factor of production.¹ So important is the human need for land, it is necessary to have a land certificate as

¹Effendi, Perjuanganin, 1986, "Agrarian Law in Indonesia", Jakarta: Rajawali Perss, page 13

a strong legal basis in order to avoid land use which often leads to the realm of dispute cases such as land acquisition, evictions, status of land rights and so on which require serious attention to the legal case.

Land Deed Making Officer (PPAT) is a public official who is given the authority to make authentic deeds regarding a certain legal action regarding land rights or ownership rights to apartment units.² Another definition also states that a PPAT is a public official who is authorized to make deed of transfer of land rights, deed of imposition of land rights, and deed of granting of power of attorney to impose mortgage rights according to applicable laws and regulations.

A certificate is a written statement owned by an authorized person to be used as a means of proof. At first the registration of land certificates was held according to the provisions of Government Regulation (PP) Number 10 of 1961 concerning land registration, but because this PP has not been maximized due to several obstacles, namely limited funds and manpower so that most land tenure is not supported by adequate means of proof, other than that this PP is not enough to provide the possibility of carrying out land registration in a short time and with satisfactory results. As a solution to this weakness, new regulations regarding land registration were issued to improve the previous land registration regulations³.

The digital era is an era where all activities that support life are facilitated by technology to make it more practical and modern. The development towards the digital era cannot be prevented anymore. The launch of the electronic land certificate policy starts in 2021 with the issuance of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 1 of 2021 concerning Electronic Certificates, which was signed by the Minister of Agrarian Affairs Sofyan Djalil on January 12 2021. This Belaid actually has pros and cons.

Land administration that is still conventionally based must be shifted towards digital-based land administration. Land administration services such as complete systematic land registration that are not yet digitally based must be directed towards digitization, especially in an era of accelerated development of science and technology. This is to speed up services, facilitate entry of investment, integrate data between development sectors, and accelerate the realization of national goals.

The ATR/BPN Ministry has already started making efforts in that direction. One way is to apply the Computerized Land Office (KKP) program. The program has

²Permen ATR/BPN Article 1 Regulation of the Head of the National Land Agency Number 2 of 2018.

³Aprini, E. (2007). Legal Certainty Certificate of Land Rights. Semarang

succeeded in building public service innovations at the land office, such as Land Information SMS, LARASITA ball pick-up service, online file information, online workload monitoring, and online monitoring of performance achievements. Digitization of land administration on the one hand must be encouraged so that it is maximized to facilitate public services and help accelerate development. However, on the other hand, digitalization of land must also be encouraged to be in line with statutory provisions. For example, how land information related to a person's personal data must be approved by the person concerned.

2. Research Methods

The research approach method used in this thesis is a sociological juridical research method. Sociological juridical research Sociological juridical approach is a method that is carried out by studying the applicable legal provisions and what happens in reality in society⁴. The specification of this study uses descriptive analysis, namely conducting a description of the research results with data that is as complete and as detailed as possible. Sources of data come from primary data as well as secondary data related to the role and authority of the PPAT. The data collection method is by means of interviews, Document Studies or Library Materials. The data analysis method used in analyzing the data is qualitative data analysis, namely data that cannot be measured or assessed with numbers. Qualitative data analysis describes data in a quality and comprehensive manner in the form of regular, logical, non-overlapping, and effective sentences, making it easier to understand and interpret data⁵.

3. Results and Discussion

3.1 The Role and Authorities of PPAT in Electronic Land Certification

Based on the BPS data, Indonesia's population from 2018-2020 is 264,161,600, 266,911,900, 269,603,400, respectively where each year has increased significantly. This population growth can be categorized as very rapid and will continuously increase, thus making conditions in Indonesia increasingly denser. Besides that, this phenomenon is in contrast to the land area which does not increase so that it has the potential to cause conflict in the community, therefore regulations are needed regarding the validity of the status of rights over land parcels so as not to cause conflict in the community.

The role of the PPAT refers to Article 1 of the Regulation of the Head of the National Land Agency Number 2 of 2018, that: Officials for Making Land Deeds, hereinafter referred to as PPATs, are public officials who are authorized to make

⁴Suharsimi Arikunto, 2002 *Research Procedures A Practice Approach*, Jakarta

⁵Ishaq, Op. cit, p. 69.

authentic deeds regarding certain legal actions regarding land rights or ownership rights over housing units. Arrange⁶. Whereas article 2 of government regulation number 24 of 2016 concerning amendments to government regulation number 37 of 1998 states that the PPAT has the main duty to carry out some land registration activities by making deeds as proof that certain legal actions have been carried out regarding land rights or ownership rights to apartment units that will be used as the basis for the registration of changes in land registration data resulting from the legal action.

According to the statement described above, the role of the PPAT is to carry out some of the land registration activities by making deeds as proof that certain legal actions have been taken regarding Land Rights or Ownership Rights over Flats Units which will be used as the basis for registration regarding changes to land registration data which include: buying and selling, exchange, grants, entry into certain companies, distribution of joint rights, granting Building Use Rights/Utilization Rights over Freehold Land, granting Mortgage Rights, and granting Power of Attorney to give Mortgage Rights.

With regard to the role of the PPAT in carrying out electronic land certificates, according to the explanation of Hardianti Fahli SH, M.Kn, one of the PPATs selected as respondents, that PPAT plays a very important role in providing legal certainty to the land certificate process. Especially now that it's getting easier with the development of technology that has used digital systems electronically. "Of course it strongly supports the existence of online certificates or electronic certificates so that they can synergize with technological developments, but in this case the government before implementing this regulation needs to pay attention to the system so that it is easily understood by the general public, especially the common people." The solution is with socialization and communication to people who are blind to electronics, especially the general public regarding the implementation of electronic-based land services, so that people can receive information related to the electronic system. Hardianti Fahli SH, M.Kn continued, said that the benefits of electronic certification are being able to realize electronic-based land services and the results of land registration activities are published in electronic form.⁷

This was confirmed by another PPAT, namely Agus Jaya SH, who also stated that he would support the policy regarding the electronic issuance of land certificates while still taking into account the existing considerations.⁸. Based on this

⁶Permen ATR/BPN Article 1 Regulation of the Head of the National Land Agency Number 2 of 2018.

⁷Interview on 10 June 2022 at Jl. Laode Hadi, Bende, Kec. Kadia, Kendari City, Southeast Sulawesi

⁸Interview on 8 July 2022 at Jl. Dr. Sam Ratulangi No. 118, Kendari City, Southeast Sulawesi

explanation, the role of the PPAT in the implementation of the Certificate of Freehold Land is to provide legal certainty and protection.

Based on the understanding and role, as well as the authority of the PPAT, the PPAT in the City of Kendari has carried out its obligations in accordance with its role. PPAT plays a very important role in providing certainty and providing legal protection for interested parties. Because, the law in public life requires evidence that clearly determines the rights and obligations of a person as a legal subject in society, in this case the evidence in question is a certificate. Certificates as the strongest evidence have an important role in every legal relationship in people's lives, which in this case is land ownership rights.

The authority of the PPAT is to make an authentic deed by creating, carrying out and working on the PPAT deed himself, not filling out a formula. If the PPAT is still filling out the form, it proves that there has been a misunderstanding and misdirection in understanding and applying the PPAT's authority to make the deed form itself according to the correct legal regulations.⁹

Based on the description above, the PPAT has the authority to make authentic deeds regarding all legal actions that have been determined by the laws and regulations that apply to their position. The PPAT is only authorized to make deeds regarding legal actions specifically mentioned in its appointment.

According to Permen ATR/BPN No. 1 of 2021 article 1 paragraph (8) Electronic Certificates, hereinafter referred to as e-Certificates, are Certificates issued through the Electronic System in the form of Electronic Documents¹⁰. The electronic system used today follows the development of the era where technology is a means of managing life, especially in land registration. Land registration is a series of activities carried out by the State/Government regularly and continuously, namely by collecting data or special information regarding certain lands in certain areas, processing, bookkeeping and presenting and maintaining physical data and juridical data. , in the form of maps and lists, regarding land parcels and flats, including the issuance of certificates as proof of title for land parcels that already have rights and ownership rights to flats units and certain rights that burden them.¹¹

The implementation of land registration is an activity of collecting and processing physical and juridical data on land parcels to be registered. The process of

⁹Dr. Habib Adjie, SH, M.Hum, 2010 *Knitting Thoughts in the World of Notaries and PPATs*, (Bandung: PT Citra Aditya Bakti) p. 103

¹⁰Permen ATR/BPN Article 1 paragraph 8 Regulation of the Head of the National Land Agency Number 1 of 2021

¹¹Boedi Harsono, 2002, *Indonesian Agrarian Law, History of the Formation of the Basic Agrarian Law, Content and Implementation*, National Land Law, (Jakarta: Bridge), p. 72.

implementing land registration on a legal basis is regulated in Permen ATR/BPN No. 1 of 2021 and Government Regulation No.18 of 2021 which regulates Management Rights, Land Rights, Flats and Land Registration¹². So it can be described that the process of land registration activities is data collection, data processing (processing), data storage and data presentation. Land registration as referred to carried out in an electronic system, where the implementation of electronic land registration is carried out in stages determined by the Minister.

With regard to the policy of implementing electronic land registration, according to Hardianti Fahli SH, M.Kn's explanation, one of the PPATs selected as respondents stated that electronic certificates as evidence are still valid because everything has been stipulated on a legal basis that has been made. "In essence, it can still act as legal evidence. Based on Article 5 of Act No. 1 of 2021 concerning electronic certificates, it is explained that the electronic documents as referred to in Article 4 paragraph 3 and/or their printouts are valid evidence in accordance with the procedural law in force in Indonesia"¹³Hardianti Fahli said.

Implementation of electronic land registration in Indonesia will be implemented in stages¹⁴. The activity of issuing e-certificates starts with land registration for the first time and implementation of maintenance of land registration. The electronic document issued at the time of first land registration is an e-certificate for land that has not been registered. Or, for those who are going for media transfer, submit an application for a change from an analog certificate to an e-certificate for land that has already been registered, then the analog certificate will be withdrawn and media transfer (scanned) will be carried out and the analog certificate will be put together in the land registration document kept at the Land Office.

The results of the implementation of electronic land registration are in the form of Electronic Documents which are then ratified using electronic signatures, and/or documents that are converted into Electronic Documents, through validation by the Land Office official or appointed official and given a digital stamp through the electronic system.

Based on the descriptions above, it can be concluded that PPAT has a very important role and authority in land registration activities in Indonesia. PPAT plays an important role in legal protection for interested parties. The PPAT in Kendari City in the process of implementing land certification has carried out its obligations according to its role. In relation to electronic land certification, the PPAT in Kendari City stated that they still fully support this policy but still

¹²Government Regulation No. 18 of 2021

¹³Interview on 10 June 2022 at Jl. Laode Hadi, Bende, Kec. Kadia, Kendari City, Southeast Sulawesi

¹⁴Yulia Jaya Nirmawati, 2021, Head of the Public Relations Bureau of the ATR/BPN Ministry.

consider the slightest things because this policy is still new in its implementation. Several legal bases have been established to accommodate this policy, such as ATR/BPN Regulation Number 1 of 2021, Agrarian Regulation Number 9 of 2019 Regulation No. 2 of 2018, and so on.

3.2. PPAT Obstacles and Solutions in Electronic Land Registration

In the current era of digitalization, where everything is completely technological, including the process of electronically certifying land, the obstacle faced by PPATs is that of course it requires an adjustment in time to regenerate the process, which was previously manual (physically) to an electronic system. The emergence of various considerations that reap the pros and cons related to this policy regulation also raises many obstacles in its implementation.

Completion of land registration first is prioritized simultaneously and comprehensively in all parts of Indonesia. There is fear and still do not believe in the accuracy of data in electronic certificates, fear of being hacked, leaking data, cannot be used as collateral for debt at the Bank, questioning the strength of evidence in court and there is a culture of feeling comfortable with holding certificates in paper (analog) form, thus various public concerns with the emergence of the Government's desire to implement e-certificates. News about electronic land certificates on social media, which tended to be very negative, created public panic about the news of the withdrawal of the original land certificates by the Land Office employees after the issuance of the belaid.

According to Dewi Kartika, who considered that the Candy violated higher regulations. "Issuance of this Ministerial Regulation regarding electronic certificates violates higher regulations, namely PP No. 24 of 1997 concerning Land Registration, PP No. 40 of 1996 concerning HGU, HGB and Usage Rights and Act No. 5 of 1960 concerning Basic Agrarian Regulations". Dewi said to Tempo (Thursday, 4 February 2021).¹⁵

Lack of understanding about the procedure for obtaining land title certificates electronically, of course, by explaining it to the public so that they can understand that this is indeed the case for land registration in the current era of digital modernization where almost all aspects are electronically systemized.

Regarding the many opinions pro and con that occurred as a result of the issuance of this electronic certificate, it is a challenge for the PPATs themselves in convincing the public about the implementation of electronic land registration. PPAT Hardianti Fahli SH, M.Kn. emphasized that the policy that has been determined will still be fully supported, but there is a need for socialization in

¹⁵<https://nasional.tempo.co> Thursday, 4 February 2021

advance regarding the process of implementing electronic land certificates¹⁶. With socialization and communication to people who are electronically blind, especially ordinary people, regarding the application of electronic-based land services, the public will get information on land registration electronically.

The lack of understanding by the public or the applicant about the procedure for obtaining land certificates electronically is normal. Of course, to overcome obstacles in land certification, one must explain it to the applicant so that they understand that this is indeed the sequence of land registration to obtain the certificate.

Legal certainty and protection in the electronic issuance of land certificates has been regulated by the government. Laws on PPATs, laws on land titling, and laws on fields related to these laws originate from basic norms, namely Pancasila and the 1945 Constitution. Regarding data security, the public need not be afraid because all data, information and/or or electronic documents will be stored completely in the electronic system database at the local government, in this case BPN.

According to Gustav Radbruch, legal certainty must contain the meaning of legal positivism reasoning, meaning the activity of thinking positively problematically. The goal of absolute legal certainty is to be achieved in order to protect the public interest (which also includes personal interests) with the function of being the prime mover of justice enforcement in society, upholding citizens' trust in authorities (government), and upholding the authorities' authority before the eyes of citizens.¹⁷

The reality is that in carrying out their duties, PPATs often have to make choices, whether to comply with legal provisions, or to use policies because of the complexity of the problems that cannot be accommodated in the legal provisions. Sociologically, PPATs do not only act as public officials subject to legal provisions, but on the other hand PPATs are also individuals who live in society and as social beings who must care about social interests. PPAT is not solely bound by values and norms, but its actions are also associated with practical problems in the context of social life. The PPAT's actions to resolve the issue of land certification by combining various legal provisions will cause problems.

PPAT's problem, especially in the city of Kendari, in carrying out land certificates electronically is that they still need maturity in carrying out this process, in the sense that it takes time to convince the public that electronic land certificates are

¹⁶Interview on 10 June 2022 at Jl. Laode Hadi, Bende, Kec. Kadia, Kendari City, Southeast Sulawesi

¹⁷Gustav Radbruch, 1950. *Legal Philosophy*, in the *Legal Philosophies of Lask, Radbruch and Dabin*, translated by Kurt Wilk, Massachusetts: Harvard University Press.

safe and legal certainty is guaranteed by the government. The PPAT in the city of Kendari emphasized that the policy that had been determined would still be fully supported, but the effort that needed to be made was the need for prior socialization regarding the process of implementing electronic land certificates.

4. Conclusion

The PPAT in carrying out land certification found obstacles, namely the files collected by the applicant were incomplete and did not meet the specified requirements. Then with the transition to the era of digitalization with an electronic system, there is still a need for a process of adjustment and outreach to the community due to the many pros and cons questions that arise in the heads of the public regarding changes to the land registration system electronically. PPAT in Kendari City in carrying out land certificates supports this policy by participating in efforts to socialize to the public that this electronic land registration system makes it easier and guaranteed security in accordance with the legal review in force in Indonesia. Minimizing the obstacles that occur in the implementation of electronic land certificates, it is very important to have periodic socialization from the National Land Agency, especially socialization related to the electronic issuance of land certificates.

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