

The Application of Electronic Certificates to Provide Legal Certainty of Land Ownership

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Abstract. *This study aims to find out the application of electronic certificates based on the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 1 of 2021 concerning Electronic Certificates and to provide legal certainty for ownership of land based on electronic certificates. The approach method in this research is statutory approach, research specifications are normative legal research (doctrinal legal research) the required data includes secondary data in the form of primary legal materials and secondary legal materials, taken by the method library research. data analysis method using deductive logic. Based on the research concluded first application of electronic certificates based on the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 1 of 2021 concerning Electronic Certificates which provides easy access for the public because the data is in electronic form, both guarantees of legal certainty will be realized because for the element of proof, electronic certificates are also valid evidence.*

Keywords: *Certificates; Electronic; Technology.*

1. Introduction

One of the basic things regulated in the UUPA is related to the types of land rights and forms of ownership. Article 16 paragraph (1) UUPA regulates land rights, including ownership rights, usufructuary rights, building use rights, usufructuary rights, rental rights, rights to clear land and collect forest products and other rights besides these rights which will be stipulated by law and are temporary in nature. These rights can be obtained through inheritance, buying and selling, exchange, grants and others. Acquisition of the above rights then needs to be

registered with the National Land Agency (BPN) to obtain a certificate which is a guarantee of legal certainty of ownership of land rights.¹

However, it is undeniable that there are still many problems arising from overlapping certificates which of course cannot guarantee legal certainty over land. The occurrence of falsification of land certificates, multiple land certificates or overlapping land certificates and the rise of the land mafia are the causes of various land disputes which will ultimately harm the community. This means that certificates of land rights no longer guarantee legal certainty for the community.

Therefore the government made a legal breakthrough by issuing a regulation on January 21, 2021. The Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia has stipulated Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency (Permen ATR/BPN) Number 1 Year 2021 concerning Electronic Certificates.²

Through this regulation, apart from providing guarantees of legal certainty, it also provides convenience services for the community so as to optimize the use of information and communication technology by implementing electronic-based land services.³

This breakthrough is then expected to become the database of the land agency to minimize the causes of land disputes while at the same time strengthening the legitimacy of land title certificates as a guarantee of ownership of land rights in Indonesia.

2. Research Methods

This study uses doctrinal research methods based on the first and second legal concepts, namely law as the principle of truth and justice which is natural and applies universally, the type of study is legal philosophy and law is positive norms in the national legislation system, the type of study is pure legal teachings. Approach method using a statutory approach. That is an approach that is carried out by examining all laws and regulations that are related to the legal issues being handled⁴. The type of data that will be used in this study is secondary data, namely a number of legal materials or facts or information used by someone indirectly and obtained through library materials, consisting of literature,

¹Kartini, K., Widjaja, G. (2004), Land Rights. Jakarta: Kencana, p. 83

²Sappe, S., Latturete, AI, & Uktolseja, N. (2021). Right to Use Land with Property Rights and Dispute Resolution. *Batulis Civil Law Review*, 2(1), 78-92.

³Nur Hidayani Alimuddin , (2021), Implementation of Electronic Certificates as Guarantees for Legal Certainty of Ownership of Land Rights in Indonesia, *SASI Journal*, Volume 27 Number 3, July - September 2021: h. 335 - 345 p-ISSN: 1693-0061 | e-ISSN: 2614-2961 . p. 336

⁴Peter Mahmud Marzuki, (2005), *Legal Research*, 1st edition, 2nd printing, Kencana Prenada Media Group, Jakarta, p. 94

documents, applicable laws and regulations, reports, dissertations, theories and other written sources related and relevant to the problem under study.⁵ Retrieval of data using library research, namely research on secondary data.⁶ Literature study is a tool used to collect legal materials by using content analysis.⁷ Then the data obtained in this study were analyzed using a deductive syllogism deductive syllogism, which is a way of drawing conclusions from things that are general in nature to specific ones that are individual.⁸

3. Results and Discussion

3.1. Application of electronic certificates based on the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 1 of 2021 concerning Electronic Certificates

The mechanism for a land registration system based on an electronic system is then regulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 1 of 2021 concerning Electronic Certificates. The output of this system is in the form of electronic documents. The meaning of electronic documents as regulated in Article 1 Number 2 of the Ministerial Regulation is any electronic information that is created, forwarded, sent, received, or stored in analog, digital, electromagnetic, optical, or the like, which can be seen, displayed, and/or heard through a computer or Electronic System, including but not limited to writing, sound, pictures, maps, designs, photographs or the like, letters, signs, numbers, access codes, symbols or perforations that have meaning or meaning or can be understood by people who are able to understand them. In this case the intended electronic documents are in the form of electronic certificates or e-certificates.⁹

Permen ATR/BPN No.1 of 2021 concerning Electronic Certificates Article 2, namely:

1. Land registration can be carried out electronically.
2. The implementation of electronic land registration as referred to in paragraph (1) includes:
 - a. land registration for the first time; And

⁵Ibid., p. 46

⁶Ronny Hanitijo Soemitro, (1990), Legal and Jurimetric Research Methodology, Ghalia Indonesia, Jakarta, p. 11

⁷Op Cit Peter Mahmud Marzuki, 2011, p. 21

⁸Dwi Prilmilono Adi, (2015), Legal reasoning in scientific criticism, Journal of JATISWARA Law, Faculty of law, Mataran University, Vol. 3, No. 3, November 2015, pp, 454-455

⁹Ibid, Nur Hidayani Alimuddin, (2021), implementation of Electronic Certificates.....p. 340

b. maintenance of land registration data.

3. Land registration as referred to in paragraph (2) shall be carried out through the Electronic System.

BPN is tasked with managing and developing land administration which includes Arrangements for the Use, Control, Ownership and Management of Land (P4T), control of land rights, measurement and registration of land and others related to land issues, so that BPN plays an active role in realize the use of land for the greatest possible prosperity of the people by carrying out its functions in the land sector as a non-departmental institution serving the President.

In accordance with the provisions of Article 19 of the UUPA, land registration is carried out by the Government, in this case the BPN. According to Government Regulation Number 24 of 1997 the implementation of land registration is carried out by the Head of the Land Office, except for certain activities assigned to other Officials. Certain activities assigned to other officials, namely activities whose utilization is national in nature or exceeds the work area of the Head of the Land Office, for example measuring basic technical points and photogrammetric mapping. To carry out the duties and functions of BPN in the regions, BPN Regional Offices are set up in provinces and Land Offices in districts/cities.¹⁰

The Land Office is a vertical BPN agency in the Regency/City which is under and responsible to the Head of the National Land Agency through the Head of the Regional Office of the Provincial National Land Agency. The Land Office is led by a head with the status of a civil servant. And in carrying out these tasks the Head of the Land Office is assisted by the PPAT and other Officials who are assigned to carry out certain activities according to Government Regulation Number 24 of 1997 and the relevant laws and regulations.¹¹

Permen ATR/BPN No.1 of 2021 also states that registration of land certificates for the first time is required to include 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 registers and documents carried out through the electronic system.¹² Meanwhile, proving land ownership rights needs to be done based on written evidence regarding land ownership. The written evidence can be in the form of an electronic document issued through an

¹⁰Alimuddin, NH (2021). Implementation of Electronic Certificates as Guarantees for Legal Certainty of Land Rights Ownership in Indonesia. *SASI*, 27(3), 335-345.

¹¹Herawza, MF (2021). Juridical Review of Electronic Certificate Security Guarantee Based on the Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency Number 1 of 2021 Concerning Electronic Certificates (Doctoral dissertation, University of Muhammadiyah Malang. Pg. 12

¹²ibid

electronic system and/or a document that the media converts into an electronic document.¹³

Some data will be collected in electronic documents consisting of measuring drawings; land plot map or spatial map; measurement letter, drawing of floor plan of flat unit or space measurement letter; and/or other documents which are the result of physical data collection and processing. Each land parcel that has defined boundaries, both in systematic and sporadic land registration, is also given a land parcel identification number. Later, landowners will only have certificates electronically. While the physical certificates that are currently circulating in the community will also be withdrawn and then stored at the Land Office.

Media transfer is a process, effort, and activity of transferring media from the form of printed documents to digital form without changing or reducing the value of the information contained therein, along with the definition of media transfer as stipulated in PP. Number 88 of 1999 concerning Procedures for Converting Company Documents into microfilm or other media, is the transfer of media to microfilm and other media that are open to paper with high security, such as CD Roms and Worms.¹⁴ Transferring media is an activity of transferring information from textual or written form to electronic, without reducing an information content, provided that the new media used can guarantee that the results are more effective and efficient change the form or media of information from paper (print) to other forms such as micro/video disks or other forms of magnetic tape.¹⁵

The implementation of this rule will then have a direct effect on land parcels that will be registered and those that have been registered. As stipulated in Article 12 of this Government Regulation, land whose rights have been assigned to become land rights, management rights, ownership rights to apartment units, mortgage rights or waqf land are registered through an electronic system and issued e-certificates. Then, as proof of ownership of the rights to the rights holder/nazhir, an e-certificate is given and access to the tel certificate in the electronic system.¹⁶ Although there are exceptions to the granting of this e-certificate, namely if the physical data or juridical data are incomplete or are still in dispute. Regarding land that has been registered, the certificate will be replaced with an

¹³Pure, CS (2018). Transfer of Land Rights Without a Certificate. *Lex Librum: Journal of Law*, 4(2).

¹⁴Silviana, A. (2021). The Urgency of Electronic Land Certificates in the Land Registration Legal System in Indonesia. *Administrative Law and Governance Journal*, 4(1), 51-68.

¹⁵Refialy, L., Sedyono, E., & Setiawan, A. (2015). Security of digital land certificates using digital signature SHA-512 and RSA. *JuTISI (Journal of Informatics Engineering and Information Systems)*, 1(3)

¹⁶Ibid, Nur Hidayani Alimuddin, (2021), implementation of Electronic Certificates.....p. 340, Regarding people who already have analog land certificates (currently used land certificates) who will change their certificates to e-certificates there is absolutely no charge because the change is borne by the State, where the replacement process is carried out in stages based on requests for data maintenance by the applicant.

e-certificate through a request for land registration data maintenance services with a note that the physical data and juridical data in the land book and certificate are in accordance with the physical data and juridical data in the electronic system.¹⁷

Based on the simulations that have been carried out by the Ministry of ATR/BPN, basically there are no potential obstacles to the enforcement of this rule, so the main focus of the Ministry is to accelerate the validation process and upload it to the KKP application. The e-certificate given to the applicant can provide various benefits to the community such as easy access to obtain digital data and will be free from falsification of land certificates, this will then become the basis for guaranteeing legal certainty regarding ownership of land rights for the community.¹⁸

3.2. Guarantee of legal certainty of land ownership based on electronic certificates.

The existence of electronic certificates has basically been regulated in Law Number 11 of 2008 concerning Information and Electronic Transactions. Electronic documents can be categorized as formal and material requirements of electronic documents so that they have evidentiary value, namely first, in the form of electronic information that is created, forwarded, sent, received or stored, which can be seen, displayed and/or heard via a computer or electronic system, including writing, sounds, images and so on that have meaning or significance or can be understood by people who are able to understand them. Secondly, it is declared legal if it uses or originates from an electronic system in accordance with the provisions stipulated in the law, thirdly it is considered legal if the information contained therein can be accessed.¹⁹

If the e-certificate has met these standards as stipulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 1 of 2021 concerning Electronic Certificates Article 1 Numbers 1 to 5 which regulates electronic systems, electronic documents, data, databases data and electronic signatures. The circumstances described in the land registration activities through the electronic system are described in the form of documents in the form of measuring drawings, spatial drawings, land plot maps, spatial maps, measuring letters, floor plans, spatial measuring documents, and certificates in the form of electronic documents. So that it can be understood that this Ministerial Regulation has

¹⁷ibid

¹⁸ibid

¹⁹Prayogo, T. (2018). Application of the Principle of Legal Certainty in the Supreme Court Regulation Number 1 of 2011 concerning the Right to Judicial Review and in the Constitutional Court Regulation Number 06/Pmk/2005 concerning Procedure Guidelines in Reviewing Laws. *Journal of Indonesian Legislation*, 13(2), 191-201

fulfilled the formal and material requirements of electronic documents so that they can be used as evidence.

Land certificates in electronic form replace analog certificates, which can be used as a means of proof if problems arise in the future disputes as well as disputes over the issuance of the applicant's certificate require proof of mastery of rights²⁰The document is legal evidence that is used as proof of ownership of land rights and has the identity of the right holder in it and is stored at the national land office that has been determined in accordance with the provisions of the applicable laws and regulations, meaning that the document is proof of ownership of the rights and has the force of law.

G. J Reneir explained "that documents are a source of information in the form of state letters such as agreements, laws, concessions, grants and so on". Electronic certificates in the form of electronic documents can be categorized as electronic evidence which has the same evidentiary power as letter/written evidence made on paper and printed results as a form of valid proof. This is a reference to the legitimacy of the position of the e-certificate to be used as evidence in court as long as the data stored in the electronic system does not change (guaranteed for its integrity) according to what is in the land book.²¹

This is a form of legal certainty for the existence of technology-based electronic certificates and can be used as evidence. According to Satjipto Rahardjo, law can be seen from a sociological perspective.²² Legal certainty is something new at the level of legal objectives which appears simultaneously with the entry of the modern era where the law has begun to be written down, positive and known by the public. Legal certainty concerns the issue of law *sicherheit durch das recht* which ensures that a certain action is a crime and *sicherheit des recht selbst*, namely certainty about the law itself.²³

There are four things related to the meaning of legal certainty, namely:

1. law is positive or in the form of statutory regulations (*gesetzliches recht*).
2. this law is based on facts (*tatsachen*), not a formula about an assessment that will later be made by a judge.

²⁰Erna Dwi Sulistyowati, Suraji, Rahayu Subekti, (2022), regulation and legal certainty for the issuance of electronic certificates in the land registration system in Indonesia, of the Conference on Law and Social Studies, e-ISSN: 2798-0103, 2022, p.7

²¹Alimuddin, NH (2021). Implementation of Electronic Certificates as Guarantees for Legal Certainty of Land Rights Ownership in Indonesia. *SASI*, 27(3), p. 335–345.

²²Ali, A. (2009). *Revealing Legal Theory (Legal theory) and / Judicial theory (Judicialprudence)*. Jakarta: Kencana, p. 212-213.

²³ibid

3. The fact must be formulated in a clear way so as to avoid misunderstandings in meaning and easy to apply.

4. positive law should not be changed frequently²⁴

Legal certainty from a normative perspective is a clear and logical concept of rules which is then made into law. Clearly it can be interpreted that there is no doubt in it which can lead to multiple interpretations, meaning that a system of norms will not clash with other norms or cause a conflict of norms. Legal compliance refers to the application of laws that are clear, permanent, consistent and consistent which in their implementation cannot be influenced by a problem or opinion that is subjective in nature.²⁵This is in line with the intent and purpose of the principle of legal certainty which guarantees that justice seekers can use a definite and concrete and objective law, without the involvement of speculations or subjective views.²⁶

With legal certainty, it is hoped that it will provide legal protection for justice (seekers of justice) against arbitrary actions, which means that someone will and can obtain something that is expected in certain circumstances.²⁷

4. Conclusion

The application of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 1 of 2021 concerning electronic certificates is considered to be in accordance with the current developments, especially the dimensions of technological progress which can provide easiness in accessing land certificates and can minimize the occurrence of falsification of land certificates. To guarantee legal certainty to the ownership of land rights if the e-certificate meets the standards as evidence as stipulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 1 of 2021 concerning Electronic Certificates Article 1 Numbers 1 to 5 which regulates electronic systems, electronic documents, data, databases and electronic signatures. This can be used as a means of proof if in the future problems arise both in disputes as well as disputes over the issuance of the applicant's certificate require proof of mastery of rights.

²⁴ibid

²⁵Utrecht in Cst Kansil, Christine , ST Kansil, Engeliën R, Palandeng and Godlieb N Mamahit, (2009), Dictionary of Legal Terms, Jakarta, p. 385.

²⁶Mario Julyano, Aditya Yuli Sulistyawan, (2019), understanding of the principle of legal certainty through the construction of legal positivism reasoning, Crepido Journal, Volume 01, Number 01, July 2019, Pg. 20

²⁷Sudikno Mertokusumo, (1993), Chapters About Legal Findings, Citra Aditya Bakti: Bandung, , p. 2

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