

Renewal of electronic land registration systems based on the Regulation of the Agrarian Minister and Spatial Planning / Head of the Republic of Indonesia National Land Agency Number 1 Year 2021 concerning Electronic Certificates

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BACKGROUND PROBLEM

The Ministry of Agraria and Spatial Planning / National Land Agency (ATR / BPN) will gradually impose electronic certificates throughout Indonesia. Jakarta and Surabaya are the first city to apply this electronic certificate. In fact, the Ministry of ATR / BPN also guarantees to the public, eliminating management money to obtain land electronic certificates. However, this process still requires non-tax state income (PNBP) as a normal cost of returning a name or request for a new certificate. At present, the government has made legislation that regulates the transformation of this land, namely the Regulation of the Minister of Agraria and Spatial Planning / Head of the Republic of Indonesia National Land Agency Number 1 Year 2021 concerning Electronic Certificates.

Electronic certificate registration will begin in two ways. First aimed at ownership of the land that has not been registered. For unregistered tans there will be a normal thing, for example measurement, physical data processing, proof of rights and bookkeeping, then the issuance of certificates will occur. Then the second is electronic serific exchange for landowners who have been registered with the application. Request the certificate holder to get an electronic certificate.

Electronic certificates, hereinafter referred to as Sertipikat-EL are certificates published through electronic systems in the form of electronic documents. 9. Space map is a measurement and mapping document that contains information on the object of space passed by the authorized official used in land registration activities.¹

The application of this electronic system includes the collection, processing, and presentation of data to then produce land certificates in the form of electronic documents. Electronic systems are a series of devices and electronic procedures that function to prepare, collect, process, analyze, store, display, announce, send and / or distribute electronic information.²

The plan, this electronic land certificate will be made with fingerprints while their authentication using the retina of the eye, face shape and others. The signing process is also carried out electronically. As stated in article 1 number 5 candy. ATR / BPN No. 1 year 2021, an electronic signature is a signature consisting of electronic information attached, associated or related to other electronic information used as a verification and authentication tool. It is aimed at so that many cases of land mafia occur in Indonesia are not repeated. Actually, it has been renewed for a long time in the land field.

Since 1980, one of the GIG technology has been used, namely the portable Global Positioning System (GPS) / navigation (the accuracy of only 3 meters) to determine the location, but this is still very limited. This condition certainly triggers the development of projects based on community participation, especially in the field of land survey.³ While the technology used today is geographical information system technology (SIG). The use is sourced on the Web OpenStreetMap (OSM) which is useful for the process of measuring and urban mapping, but in practice the measurement process is still being carried out conventionally, the survey officer still comes to the location of the land to make land measurements

¹ Article 1 Number 8 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

² Article 1 Number 1 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

³ Emlid.com. REACH RS+: Single-band RTK GNSS receiver with centimeter precision. Taken from <https://store.emlid.com/product/reachrs-survey-ki>. Retrieved November 7, 2021.

and the determination of the boundaries. Seeing this phenomenon, whether the transformation of electronic certificates that in fact will begin in the city of Jakarta and the city of Surabaya can be applied in all regions of Indonesia?

Many things we need to pay attention to, in the process of transforming conventional soil certificates to this electronic certificate. The renewal of this law must certainly be careful, not to find new problems later on. In this writing, the issue will be reviewed which is likely to occur with the existence of an electronic certificate and prevention efforts so that the problem does not occur. Moreover, if the existence of the Land Surveyor profession in the future is still needed? While there is now a technological development which is the technology of Geographical Information Systems (GIS)?

RESULTS OF RESEARCH AND DISCUSSION

a. Implementation Of Electronic System Land Registration

From the definition above land registration is a refinement of the scope of land registration activities based on article 19 paragraph (2) Government Regulation No. 10 of 1961 which only includes measurement, mappings and land bookkeeping, registration and transition of land rights and provision of proof of rights as a strong proof.⁴

Parties who have an interest in land rights include: 1. The interests of land rights holders so that they can easily prove that they are entitled to the relevant land. 2. The interests of other interests for prospective buyers and prospective creditors, so that they easily get data that can be trusted.⁵

The implementation of an electronic system is regulated in Article 2 to Article 5 of Minister of ATR / BPN Regulation No. 1 year 2021. The implementation of land registration can be carried out electronically. Implementation of electronic land registration includes:

- a. land registration for the first time; and
- a. Maintenance of land registration data.

Both of the land registration was held through an electronic system. The implementation of electronic land registration is enforced gradually determined by the Minister. The results of the implementation of electronic land registration in the form of data, electronic information and / or electronic documents. Electronic documents are any electronic information made, forwarded, sent, received, or stored in analog, digital, electromagnetic, optical, or the like, which can be seen, displayed, and / or heard through computers or electronic systems, including but unlimited In writing, sound, image, map, design, photos 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 it.⁶

Data, electronic information and / or electronic documents are data on rights holders, physical data and juridical data on the valid and maintained soil field. All data, information and / or electronic documents are stored on electronic system data bases.

Definition of data to be used in the issuance of certificates is a description of something that is included but not limited to writing, sound, image, map, design, photo, electronic data interchange (EDI), Electronic mail, telegram, telex, teley or the like, letters, marks, numbers, access codes, symbols, or perforations. Meanwhile, the database is a data set that is organized systematically and is integrated and

⁴ Muhammad Yamin Lubis dan Abdul Rahim Lubis, *Pencabutan Hak, Pembebasan, dan Pengadaan Tanah*, Bandung: Mandar Maju, 2011. hal 138

⁵ Aartje Tehupeiory, *Pentingnya Pendaftaran Tanah di Indonesia*, Jakarta: RaihAsaSukses, 2012, hal 7

⁶ Article 1 Number 2 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

stored in large memory and can be accessed by one or more users from different terminals.⁷

Implementation of electronic systems as referred to in Article 2 paragraph (3) of Law No. 1 year 2021 is carried out reliably, safely, and is responsible for the operation of the electronic system. Implementation of electronic systems for land registration implementation include:

- a. data collection;
- a. data processing;
- b. Data presentation.

The results of the implementation of electronic systems in the form of electronic documents, in the form of:

- a. Electronic documents published through electronic systems; and / or
- a. Documents carried out by media into electronic documents.

Electronic documents published through electronic systems using electronic signatures in accordance with the provisions of legislation. Electronic documents The media transfer will be validated by authorized officials or appointed officials and given digital stamps through an electronic system. Print results from electronic documents will be used as legal legal evidence and expansion of legal evidence in accordance with the law of events that apply in Indonesia for proof, electronic documents can be accessed through an electronic system.

According to Government Regulation Number 71 of 2019 concerning the Implementation of Systems and Electronic Transactions Article 60 Paragraph (3), the electronic signature is certified must fulfill the validity of the legal strength and due to the electronic signature law, using an electronic certificate made by Electronic Certification Organizing Services (PSRE) Indonesia and made using a certified electronic signature maker device.

b. Issuance of Certificate of Electronics For First Time

A certificate as proof of mailing is absolute rights if it meets a cumulative elements. According to Article 32 of PP 24 in 1997, which, the nature of the proof certificate as proof of rights, namely:

1. Certificate is a proof of the rights that apply as a strong evidence of the physical data and juridical data contained therein, all the physical data and juridical data in accordance with the existing data in the measurement certificate and land book;
2. In the case above duatu diterbita plot already legally certificate on behalf of persons or legal entities who acquire the land in good faith and actually master it, then the other party feels it has the right to land can no longer sue if the exercise of these rights in within 5 years from the issuance of the certificate was not filed an objection in writing to the certificate holder and the head office of the land concerned, or not filed a lawsuit to the court regarding land tenure or the issuance of certificates.

The term in its modern sense first appeared in a 1958 article published in the Harvard Business Review, where authors Leavitt and Whisler commented that “the new technology has not had a single name that was set up. We’ll call it information technology (IT). Some of the fields of modern and emerging information technology is the next generation web technologies, bioinformatics, “ Cloud Computing “, global information systems, large-scale knowledge base and others.

According to the Oxford Dictionary (1995) Information Technology is the study or electronic equipment, especially computers, to store, analyze, and distribute information, including words, numbers, and pictures. Benefits Benefits Information Technology information technology, among others:

⁷ Article 1 Numbers 3 and 4 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

- a) Make it easy for us to obtain information and communication;
- b) The opening of new business opportunities;
- c) An increase in the quality and quantity of public services, d) An increase in the distance jah information services in the field of health (telemedicine);
- d) The creation of e-Learning as a means to improve the education system;
- e) The creation of jobs;
- f) Enhancing science and knowledge in all areas, including the cultural aspects;
- g) and encouraged the democratic process in every way.

Advances in technology encroaching upon the land registration process as an act of displacement mapun transition. These disruptions in the Era of the Ministry of ATR / BPN will launch the Issuance of Certificate-el for the first time to do that can be done through the first land registration for land which has not been registered; or replacement becomes Certificates Certificates-el on land that is already registered.

First land registration for land that has not been registered with the so-called sporadic land registration. First land registration activities for unregistered land cover data collection and processing physical evidence and the rights of its books, issuance of Certificate, data presentation physical and juridical, as well as a general list and document storage, implemented through the Electronic System.⁸ The results of data collection and processing activities of the physical form of electronic documents, comprising:

- a. Measure;
- a. Map Parcel or Map Room;
- b. Measure Letter, Image Map Unit Measure Letter Flats or space; and / or
- c. Other documents, which is the result of physical data collection and processing.

Each plot already well defined boundaries in the systematic land registration and sporadic assigned an identification number plot. Plot identification number consists of 14 digits, namely: the first 2 digits is the code of the Province; The next two digits is the code of the Regency / City; 9 the next digit is the number of parcels of land; and 1 last digit is the code of plots of land on the surface, in the space above the ground, in the basement, apartment unit or rights over surface rights field, right above the room on the ground and right above the cellar.

Plot identification number is a reference number that is used in every phase of land registration activities. If the creation of the village / village or district, the parcel identification number is not changed. Furthermore, Article 10 provides that:

- 1) Proof of rights is based on written evidence on land ownership in the form of evidence for the registration of new rights and registration rights of long accordance with laws and regulations concerning land registration.
- 2) Evidence writing referred to in paragraph (1) may be:
 - a. Electronic document published by the Electronic Systems; and / or
 - b. document carried over media into electronic documents, in accordance with the provisions referred to in Article 4, paragraph (3).

The results of the research activities and the collection of juridical form of electronic documents, comprising:

- a) research treatise juridical and delimitation, the Minutes of the Land Investigation Committee A, Proceedings of the Land Investigation Committee B, Proceedings of Soil Investigation Research Team, Soil Investigation Treatise (establishing Rapport);

⁸ Article 7 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

- b) the announcement of the list of juridical and physical data plot;
- c) the minutes of the ratification of the physical data and juridical;
- d) determination of the right decision; and / or
- e) any other document, which is the result of juridical data collection and research.

Furthermore, the land has been set right into the land rights, property rights, ownership of the apartment units, encumbrance or land endowments are listed via the Electronic Systems and published Certificates-el. Certificate-el set stored in the Data Base in sequence according to the edition as a history of land registration into electronic land books. Certificate-el will dijadikan as proof of ownership of the rights to the rights holder / Nazhir AKN given:

- a. Certificate-el; and
- a. access to Certificate-el in Electronic Systems.

However, Certificate-el and access, as mentioned above, is not given to the rights holder / Nazhir if data is physical or juridical data is incomplete or disputed. In terms of physical data or data juridical dispute already equipped or otherwise have completed the Certificate-el and access can be granted to rights holders / Nazhir.

Then how the process of replacement of conventional Certificates Certificates-el to soils Already Registered? This replacement is already regulated in Article 14 to Article 16 of the Regulation of the Minister of ATR / BPN No. 1 Year 2021:

1. Replacement Certificates into Certificates-el to the land that is registered as referred to in Article 6 letter b for parcels which have been registered and issued Certificate of Land, property rights, property rights on apartment units or land endowments. Replacement-el Certificates Certificates be implemented through a request for land registration data maintenance services.
2. Replacement Certificates into Certificates-el done if the physical data and juridical data on land books and certificates in accordance with the physical data and juridical data in Electronic Systems. In terms of physical data and juridical data does not meet the Head of the Land Office to validate. (3) Validation includes:
 - a. Data rights holders;
 - a. physical data; and
 - b. juridical data.
3. Replacement Certificates into Certificates-el included replacement of the land book, measurement certificate and / or drawings that the apartment units into electronic documents. Replacement Certificate-el referred recorded in the land books, letters measuring and / or drawings that the apartment units. Head of the Land Office's exciting Certificate together with the land book and deposited into warkah at the Land Office. The entire warkah was carried out over the media (scan) and stored in the Data Base.

c. **Prevention Issues in Electronic Certificate Issuance Process**

The utilization of digital technology is a concern / special spotlight associated with the issuance of the new rules, ie all society's original land certificate will be withdrawn from this year. It becomes a concern and a problem for society, how the existence of the certificate is land already owned. However, this concern has been responded to by the government to replace the old land certificate with an electronic certificate, or a so-called certificate-el, in accordance with the provisions issued by the Ministry of Agricultural and Spatial Planning (Candy ATR) No 1/2021 on a Certificate Electronics. The purpose of making this electronic certificate, according to the Minister of Agrarian, to improve the indicators of effort and service to the community by embodying an electronic-based land services (kompas.com). It was taken by first making a land certificate validation earlier than the data side, the size of the land, and so on.

Once validation is complete, then the land certificate is replaced by an electronic certificate and stored in electronic databases leading to storage addresses each. Later, the landowners could print his certificate anytime and anywhere according to the regulated entity in Article 16 Candy ATR No. 1/2021 that.

Ownership of land rights as a legal relationship is defined as, “Rights on the surface of the earth that authorize the holder to use the land in question, along with the body of the earth and the water and air space above it, only needed for interests directly related to the use of the land, in the limits according to the LoGA and other higher legal regulations”. This implies that this land right, in addition to giving authority, also imposes obligations on the holder of the right.⁹

According to Soedikno Mertokusumo, the authority possessed by land rights holders over their land is divided into two, namely:

1. General authority: the holder of land rights has the authority to use his land, including the body of the earth, water and space above it only as necessary for interests directly related to the use of the land within the limits according to the UUPA and other higher legal regulations;
2. Special authority: the holder of land rights has the authority to use the land in accordance with the types of land rights, for example the authority on property rights, building use rights.¹⁰

Article 24 PP No. 24 of 1997 states that in order to obtain the validity of juridical data for old rights and for the purpose of registering rights, it is proven in two ways:¹¹

- a) Land rights originating from the conversion of old rights are proven by means of evidence regarding the existence of such rights in the form of written evidence, witness statements and/or statements in question, the content of which is deemed sufficient to register rights, rights holders and rights holders. - the rights of other parties that burden him;
- b) Rights are no longer available with complete evidence, bookkeeping of rights can be carried out based on the fact of physical possession by the registration applicant and his predecessors by fulfilling the requirements.

As the author stated in the previous chapter, that technological progress has penetrated the land registration process due to an act of transition or displacement. In this Era of Disruption, the Ministry of ATR/BPN will launch the Issuance of e-Certificates, however, the Government must develop preventive measures against the possibilities that will arise with the existence of e-certificates. this.

Issuance of electronic certificates will begin with the annulment of previously issued Conventional Certificates. Withdrawal of the original certificate is considered by the community to be very scary for the public. Why? Because people think the government has not been able to maintain public data. In fact, in the field the practice of bribery is still rampant. Then is the new policy on electronic certificates not prone to abuse and not strong enough to protect citizens' rights? ¹²According to A.P. Protection, land registration comes from the word Cadastre, a technical term for a record, indicating the area, value and ownership of a plot of land. Thus, Cadastre is an appropriate tool that provides a description and identification of these and also as a continuous recording of land rights.¹³

Some of these problems can be prevented by strengthening Human Resources within the Ministry of ATR/BPN regarding the importance of maintaining integrity and morals. Therefore, this strengthening can be done by making an integrity pact on Anti Abuse of Position and Authority in the Process of Issuing

⁹ Maria S W Sumardjono, *Tanah Dalam Perspektif Hak Ekonomi Sosial dan Budaya*, Jakarta: Koompas, 2008, hal 128

¹⁰ Sudikno Mertokusumo, *Hukum dan Pokok Agrari*, Jakarta: Karunika-Universitas Terbuka, 1998, hal 45

¹¹ Urip Santoso, *Hukum Agraria Kajian Komprehensif*, Jakarta: Kencana, 2011, hal 312- 315

¹² Feni Freycinetia Fitriani, *Pakar: Sentimen Sertifikat Tanah Elektronik di Medsos Sangat Negatif*, <https://kabar24.bisnis.com/read/20210205/15/1352811/pakar-sentimen-sertifikat-tanah-elektronik-di-medsos-sangat-negatif>, posted on 05 February 2021, 14:42 WIB, accessed on 7 November 2021, 08:35 WIB..

¹³ .P. Perlindungan, *Pendaftaran Tanah di Indonesia*, Bandung: Maju Mundur; 1999, hal 18-19

Electronic Certificates. This is done so that the public believes in the professionalism of the ministry of ATR/BPN. Bearing in mind that the issuance of conventional certificates has so far been tinged with illegal fees, the amount is sometimes inhumane because it is higher than the official fee stated in the Deposit Order (SPS).

After improving the integrity and morals of officials within the ministry of ATR/BPN, it is also necessary to comply with the provisions of the ITE Law so that the issued Electronic Certificates have legal force equivalent to wet signatures and the validity and authenticity of signatures can be accounted for. This certainly supports productivity and digital or online work systems.¹⁴

CONCLUSION

Land registration activities for the first time for unregistered land 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, carried out through the Electronic System. Meanwhile, the process of replacing conventional certificates into e-certificates for registered land is as follows:

- a. Replacement of certificates into e-certificates for registered land as referred to in Article 6 letter b is carried out for parcels of land that have been registered and issued certificates of land rights, management rights, ownership rights over flat units or waqf land. The replacement of the certificate into an e-certificate is carried out through an application for land registration data maintenance services.
- b. Replacement of certificates into e-certificates is carried out if 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. In the event that the physical data and juridical data do not match, the Head of the Land Office validates.
- c. Replacement of certificates into e-certificates including the replacement of land books, letters of measurement and/or drawings of the flats into electronic documents. The replacement of the e-Certificate as referred to is recorded in the land book, letter of measurement and/or drawings of the floor plan of the apartment unit. The Head of the Land Office withdraws the Certificate to be combined with the land book and stored as a document at the Land Office.

Some of these problems can be prevented by strengthening Human Resources within the Ministry of ATR/BPN regarding the importance of maintaining integrity and morals. Therefore, this strengthening can be done by making an integrity pact on Anti Abuse of Position and Authority in the Process of Issuing Electronic Certificates. This is done so that the public believes in the professionalism of the ministry of ATR/BPN.

SUGGESTIONS

In this new normal era, the use of electronic technology is really needed. Given the current global situation is unpredictable. During the pandemic period, Indonesia must continue to make reforms, including in the defense sector. Issuance of electronic certificates is indeed a new breakthrough that needs to be appreciated. However, the implementation must be arranged in such a way. There is a need for compliance with several related regulations and an awareness of maintaining trust and integrity. So it is hoped that with this awareness there will be no abuse of position and/or authority in the process of issuing or replacing electronic certificates.

¹⁴ TTE, *Adaptation of New Habits with Certified Electronic Signatures*, <https://tte.kominfo.go.id/blog/6077b410e4db24035ea657dc>

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