

## Legal Certainty against Electronic-Based Land Certificates as Proof of Ownership of Land Rights in Indonesia

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**Abstract.** *Previously, land certificates owned by the Indonesian people were in the form of physical documents such as books or magazines. Unfortunately, these physical documents are more easily damaged by floods, fires and loss. In fact, often these physical land certificates are easily duplicated. This of course makes the owner of the land certificate suffer losses. To overcome this, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) will enforce the use of electronic land certificates starting in 2021. The objective of this research is to examine and analyze legal certainty for electronic land certificates as proof of ownership of land rights in Indonesia; and to review and analyze the legal protection of data on electronic land certificate ownership rights. The approach method used in this study is a normative legal approach. The results of the study show that: (1) Legal certainty of land certificates in the form of electronic documents can be categorized as electronic evidence which has the same evidentiary power as written/written evidence made on paper and the printout as a form of valid proof. (2) Legal protection that can be given to electronic land certificate ownership data consists of: a) Preventive legal protection in the form of guaranteed fulfillment of personal data protection by requiring Electronic System Operators in this case the National Land Agency (BPN) to maintain the confidentiality of public personal data and safeguard it so that there is no leakage.*

*Keywords: Certainty; Certificates; Electronic; Land.*

### 1. Introduction

In the past, the history of individual land ownership relied only on memory or witness testimony. This, of course, must be imprecise, because we know that

everyone's memory must be fuzzy and the witnesses who gave the statement are not always alive and can be questioned. In Indonesia, land has existed for a long time in the sense of the relationship between land and humans, but because it is not written or registered, it is only verbally that it is known who owns the land and its boundaries or at least one plot of land is generally known to be someone's property or inheritance from a person to his heirs.<sup>1</sup>In accordance with the instructions contained in the Development Strategic Plan, efforts to reform the law will take the form of, among other things, codification and unification of laws in certain areas of law taking into account the growing legal awareness in society which as a whole will form the legal basis governing the lives of the Indonesian people in the future.<sup>2</sup>

In order to provide legal certainty to the holders of land rights and land ownership rights, Article 32 paragraph (1) of the Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration stipulates that land certificates are valid as a strong means of proof and land certificates are certificates. evidence that serves as a strong means of proof regarding the physical data and juridical data contained therein as long as the physical data and juridical data are in accordance with the data contained in the measurement certificate and the land book concerned.

Previously, land certificates owned by Indonesians were in the form of physical documents such as books or magazines. Unfortunately, these physical documents are more easily damaged by floods, fires and loss. In fact, often these physical land certificates are easy to duplicate. This of course makes the owner of the land certificate suffer losses. In order to overcome these various disadvantages, the President of the Republic of Indonesia, Joko Widodo through the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) will enforce the use of electronic land certificates starting in 2021.

Quoting from Kompas.com, Yulia Jaya Nirmawati, Head of the Public Relations Bureau of the Ministry of ATR/BPN said that the Ministry of ATR had issued a Ministerial Regulation (Permen) of Agrarian Affairs and Spatial Planning/National Defense Agency (ATR/BPN) Number 1 of 2021 concerning Electronic Certificates which began takes effect in 2021. In addition, the issuance of electronic land certificates is also useful for increasing the ease of doing business and public services to the community. That way, it will be easier for the community to take care of land rights. According to Permen ATR BPN 1 of 2021 concerning

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<sup>1</sup>AP Protection. (1990). Land Registration in Indonesia (Based on PP No. 24 of 1997), supplemented by Regulations for the Position of Land Deed Officials (PP No. 37 of 1998). First Print. Bandung: Mandar Maju. p. 36.

<sup>2</sup>Ishmael Saleh. (1986). The Role of Law in Development and Development in the Field of Law. Jakarta: Ministry of Justice of the Republic of Indonesia. p. 10

Electronic Certificates that Electronic Systems are a series of electronic devices and procedures that function to prepare, collect, process, analyze, store, display, announce, transmit, and/or disseminate electronic information.

Electronic Document itself 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, plans, 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.

Some of the benefits of an Electronic Certificate include:

1. To make it easier to access or input data related to ownership of land rights.
2. Increase efficiency in land registration.
3. Speed up banking transactions.
4. Avoid the risk of loss, fire, theft of physical documents.

The objectives to be achieved in this research are to study and analyze legal certainty regarding electronic land certificates as proof of ownership of land rights in Indonesia and to study and analyze legal protection of data on electronic land certificate ownership rights.

## **2. Research Methods**

The approach method used in this study is a normative legal approach. This normative legal research is basically research that uses legal materials originating from library research originating from primary legal materials, and secondary legal materials.

In collecting legal materials using literature study techniques by reading, understanding and studying literature books, and statutory regulations that are related to the research being raised such as the 1945 Constitution, as well as other regulations related to legal protection for people holding certificates electronic certificates and provisions for changing from ordinary certificates to electronic certificates.

After all primary and secondary legal materials have been collected, processing of legal materials is then carried out by dividing the legal materials according to the parts of the problem, then arranged in such a way as to answer the legal

issues that have been formulated. After all the material has been processed and analyzed qualitatively, the legal material is a method of research that produces descriptive data. In qualitative research, all investigators or researchers focus on the problems studied, guided by a conceptual framework or theory.<sup>3</sup>

### 3. Results and Discussion

#### 3.1. Legal Certainty for Electronic Land Certificates as Proof of Ownership of Land Rights in Indonesia

The problem of proof of ownership of land rights in Indonesia has encouraged the government to continue to innovate in issuing certificates of ownership rights. The innovation that was carried out was changing from analog certificates to electronic ones. As with the latest regulation, namely the 2021 ATR/BPN Ministerial Regulation concerning Electronic Certificates, the output of this process is an electronic document. The Director for Land and Space Registration Regulation Dwi Purnama also emphasized that the background to the launch of the electronic land certificate was the efficiency of land registration, legal certainty and legal protection. Reducing the number of disputes, conflicts and court cases regarding land and increasing the value of registering property in order to improve the ease of doing business (EoDB) rating. The implementation of electronic land registration will increase efficiency both at the input, process and output nodes, while reducing physical encounters between service users and service providers. Apart from being an effort to minimize land transaction costs, this is also effective in reducing the impact of the pandemic.<sup>4</sup>

Electronic land registration as stipulated by Permen ATR/BPN Number 1 of 2021, starting from the initial data collection process, to the issuance of electronic certificates, is carried out digitally and compiled in a database at the ministry. Validation or validation is also done digitally. The elements that make up the contents of the electronic document are the identity of the right owner, as well as the physical and juridical data of the land. The establishment of a land digital system database is expected to facilitate checking and maintaining data authentication.

The use of electronic systems in land registration has actually been designed since 1997 with the issuance of Government Regulation Number 24 of 1997 which regulates Land Registration. Article 35 paragraph (5) states that, in stages, land registration data is stored and presented using electronic equipment and

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<sup>3</sup>Sudarwan Danim and Dervish. (2003). *Midwifery Research Methods: Procedures, Policies, and Ethics*. Jakarta: EGC Medical Book Publisher. p. 262.

<sup>4</sup> Mark. (2021) Complete Explanation of the National Land Agency Regarding Electronic Land Certificates, <https://money.kompas.com/read/2021/02/06/082623626/simak-penJadian-lengkap-bpn-soal-Sertipikattanah-elektronik?page=all> , accessed on January 24 2023 at 12.00 WIB.

microfilm. Furthermore, Paragraph (6) states that the recorded documents produced by electronic devices or microfilm have the power of proof after being signed and affixed with an official stamp by the Head of the Land Office concerned.

The form and method for storing, presenting and deleting land registration documents or papers, as well as the method for storing and presenting land registration data using electronic devices and microfilm shall be stipulated by the Minister. The Ministerial Decree is then contained in the provisions of the ATR/BPN Ministerial Regulation Number 1 of 2021. In its development, Regulation of the Minister of Agrarian Affairs / Head of BPN No. 3 of 1997 also underwent renewal in several articles, namely the first was the issuance of the ATR/Ka BPN Regulation Number 7 of 2019 concerning the Second Amendment to PMNA/Ka BPN Number 3 of 1998 Article 163 A, that: "the land book is stored electronically in the form of a data base in the Electronically and can be printed using the List of Land Book Entries. Article 178A also provides that, certificates can be printed in the form of Electronic Documents through the Electronic System. The certificate in the form of an Electronic Document is ratified by an Electronic Signature in accordance with the provisions of the laws and regulations. Certificates in the form of Electronic Documents can be printed as copies of Electronic Documents to be submitted to Rightsholders. The form, content and procedure for filling out the Certificate in the form of an Electronic Document shall be stipulated by the Minister.<sup>5</sup>

Even though it has been designed since 1997 and the ATR/BPN Ministerial Regulation No. 1 of 2021 concerning Electronic Land Services has been established, the making of electronic certificates has not been fully carried out and is still being carried out in stages. Currently the electronic services provided on the Ministry of ATR/BPN website via the <https://htel.atrbpn.go.id/> page include checking certificates, certificates of land registration, information on land values or property asset values.

The next step for the National Land Agency is to implement electronic land certificates by conducting a trial run, because indeed in the regulations the implementation of electronic land certificates is gradual. The initial step for BPN is to implement an electronic land certificate through a pilot project. For the pilot project stage, according to the Directorate General for Determination of Rights and Registration of Land, Suyus Windayana plans to implement it in two major cities in Indonesia. The two locations were determined by considering the highest level of ease of doing business or Ease of Doing Business (EoDB) in

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<sup>5</sup>Ana Silviana. (2021). The Urgency of Electronic Land Certificates in the Land Registration Legal System in Indonesia. *Administrative Law & Governance Journal*, Volume 4 Issue 1, March 2021, p. 63.

Indonesia.<sup>6</sup>The implementation of the use of electronic certificates in Indonesia has lagged behind Malaysia, Singapore and the Philippines, so 2 (two) areas were determined to be pilot projects for electronic land registration, namely Surabaya and Jakarta. The application of temporary electronic certificates is prioritized for land assets of government agencies and BUMN, before applying electronic certificates in the general public.

The urgency of holding land registration in Indonesia is to guarantee legal certainty. The ultimate goal of the land registration process is the issuance of a document proving the right to land ownership, which is then referred to as a certificate. Electronic land certificates as proof of electronic ownership are recognized by the ITE Law, especially those regulated in Article 6. From a legal point of view, the issue of proving electronic land certificates is not a problem. In terms of validity and legal certainty there is no problem, especially since it has also been strengthened in Article 5 of the ATR/BPN Ministerial Regulation Number 1 of 2021, namely:

1. The Electronic Documents as referred to in Article 4 paragraph (3) and/or their printouts constitute valid legal evidence and an extension of valid evidence in accordance with the applicable Law of Procedure in Indonesia.
2. For the purposes of proof, Electronic Documents can be accessed through the Electronic System.

This is also reinforced in Article 175 of the Job Creation Law, in Paragraph 3 it explains that decisions in electronic form have the same legal force as written decisions and take effect from the receipt of the decision by the party concerned.

Legal certainty as one of the goals of law can be said as part of efforts to achieve justice. Gustav Radbruch put forward 4 (four) fundamental things related to the meaning of legal certainty, namely: First, that law is positive, meaning that positive law is legislation. Second, that law is based on facts, meaning that it is based on reality. Third, that facts must be formulated in a clear way so as to avoid misunderstandings in meaning, besides being easy to implement. Fourth, positive law should not be easily changed. Based on the theory above then:

1. The first meaning related to law is positive, meaning that positive law is legislation. The Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number

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<sup>6</sup> Mario. (2021). Two Cities Become Pilot Projects for Electronic Land Certificates, <https://economy.business.com/read/20210204/9/1352391/dua-kota-jadipilot-project-Sertipikat-tanah-elektronik-dimana-saja>, accessed January 24 2023, at 20.00 WIB.

1 of 2021 concerning Electronic Certificates is clearly a positive law which since it was enacted on January 12, 2021 has been classified in the hierarchical laws and regulations in Indonesia as regulated in the Law Number 12 of 2011 concerning the Formation of Legislation. The status of Ministerial Regulations formed after the enactment of the said law, both those formed on the basis of orders from higher laws and regulations or those formed on the basis of authority in certain areas of government affairs vested in the minister, qualify as statutory regulations.<sup>7</sup>

2. The second meaning is related to the formulation of laws based on facts (tatsachen). The facts referred to are related conditions which then form the urgency behind the formation of laws and regulations, this can then be known by referring to the preambles 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. In the consideration section, it is explained that in order to realize the modernization of land services in order to improve indicators of ease of doing business and public services to the community, it is necessary to optimize the use of information and communication technology by implementing electronic-based land services, in which the results of land registration activities are published in the form of electronic documents. So in this case it can be seen that the current condition of land services still requires an increase in service to the community that requires synergy with the use of information and communication technology. Where the progress of technology and information is one indicator of the modernity of a country.

3. The third meaning is that the fact must be formulated in a way that is clear and easy to apply. Clear in the sense that it does not cause doubts (multiple interpretations) and is logical so that it becomes a system of norms with other norms that do not clash or give rise to norm conflicts. 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 structured in accordance with the technique of drafting regulations, starting with the title, the opening which consists of phrases with the grace of God Almighty, the position of forming the regulation, namely the Minister Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia, preamble as explained above, the legal basis which in this regulation consists of 14 legal bases, after that the opening section is closed with a dictum. Then it enters the main body which consists of general provisions (Article 1), subject matter regulated (Articles 2-19), transitional provisions (Articles 20) and closing provisions (Articles 21-22). After the description of the body of the ministerial

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<sup>7</sup>Rumiarta, INPB (2015). Position of Ministerial Regulation on the Constitution, Kerta Dyatmika, Journal of Law, Vol 12 Number 2 of 2015, p.1.

regulation, it enters the closing section and attachments. In the appendix, it is explained and given examples of electronic document formats consisting of measuring drawings, spatial drawings, land parcel maps, spatial maps, measuring letters, floor plans, spatial measurements and electronic certificates.

4. The fourth meaning is that the positive law should not change frequently. This meaning is basically not in terms of limiting a rule from legal stagnation, but as long as at the level of application of this regulation its enforcement is still effective in society and in accordance with the times, the regulation has no urgency to be changed. Regarding 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 at the implementation level are still at the preparatory stage to be immediately implemented in the general public, of course in a relatively long period of time this regulation will not be changed.<sup>8</sup>

Assess from the theory of legal certainty, with the enactment of regulations regarding electronic land certificates, there are new arrangements regarding evidence in the form of electronic documents. As long as the electronic certificate from the electronic system operates properly, meaning that there is an identity code that explains the details of land rights ownership, the judge must accept the electronic evidence in court. Article 5 of the ATR/BPN Ministerial Regulation explicitly states that recognition of electronic certificates is a valid means of proving in court proceedings. This is a new breakthrough in the development of evidence in Indonesian evidentiary law. Thus, this evidence can be used as a power to settle land disputes in court. Evidence of electronic information and electronic documents is very risky to manipulate the data. The authenticity of this electronic certificate is very important. Printouts of electronic certificates containing electronic information on registered physical and juridical data on land parcels and in the form of electronic documents constitute an extension of documentary evidence and are included in the expansion of guidance evidence as stipulated in Article 184 paragraph (1) of the Criminal Procedure Code.

Based on Gustav Radbruch's opinion above, the legal certainty of a fact must be formulated in a clear way so as to avoid mistakes in interpretation. This relates to the transfer of written data to electronic data form which has been regulated in advance by Government Regulation Number 18 of 2021 that land registration can be carried out electronically. That the electronic certificate is open evidence and can be used in court. This can then be juxtaposed with the contents of

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<sup>8</sup>Nur Hidayani. (2021). Implementation of Electronic Certificates as Guarantees for Legal Certainty of Land Rights Ownership in Indonesia, SASI: International Accredited Journal, Volume 27 Number 3, p. 342.



Article 137 HIR which states: "Parties can demand to see the statements of their opponents and vice versa, which letter is submitted to the Judge for that purpose". To maintain the principle of openness of evidence in court,

Legal certainty Electronic certificates in the form of electronic documents can be categorized as electronic evidence which has the same evidentiary power as written/written evidence made on paper and the printout as a valid form of evidence. This is a reference to the legitimacy of the position of the electronic certificate to be used as evidence in court as long as the data stored in the electronic system does not change (guaranteed its integrity) according to what is in the land book.

### **3.2. Legal Protection of Data on Electronic Land Ownership Certificates**

Talking about legal protection, this is one of the most important elements of a rule of law state. It is considered important because in the formation of a country, laws will also be formed that govern each of its citizens. It is common to know that a country will have a reciprocal relationship between its own citizens. In this case it will give birth to a right and obligation to each other.

Legal protection is the right of every citizen. But on the other hand it can also be felt that legal protection is an obligation for the state itself, therefore the state is obliged to provide legal protection to its citizens. After we know the importance of legal protection, then we also need to know about the meaning of legal protection itself. Legal protection is a protection given to legal subjects in the form of both preventive and repressive instruments, both verbal and written. In other words, it can be said that legal protection is a separate picture of the function of the law itself, which has the concept that law provides justice, order, certainty, benefit and peace.

A protection can be said as legal protection if it contains the following elements:<sup>9</sup>

1. There is protection from the government for its citizens.
2. Guarantee of legal certainty.
3. With regard to the rights of citizens.
4. There are penalties for those who violate them.

The above is closely related to the data on electronic land certificate ownership rights because the implementation of the land registration system is essentially

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<sup>9</sup>Ishaq. (2009). Fundamentals of Law Science. Jakarta: Sinar Graphics. p. 43.

the basis of the procedure for obtaining guarantees for certainty over land rights which differ in terms of systems in various countries. In countries that adhere to the common law legal system, especially those in the jurisdiction of the Commonwealth of Nations or British Commonwealth of Nations, in terms of their land registration system, there are two basic classifications, namely the torrens title system (torrens system) and the English system which is a modified version of the torrens system.<sup>10</sup> The torrens system is the most complete proof of land rights holders and cannot be contested, unless the land certificate is acquired by forgery. In addition there is a positive publication system and a negative publication system, a positive publication system is implemented in countries such as Germany and Switzerland, where land certificates act as proof of absolute land rights and are the only proof of land rights. Meanwhile, the negative publication system was implemented in Continental European countries such as the Netherlands which was then also implemented in Indonesia, Malaysia and Singapore.<sup>11</sup>

The implementation of electronic land certificates has obstacles in its application, these obstacles include:

1. The application of electronic certificates cannot be implemented immediately without a valid data base on maps of land parcels throughout Indonesia so that without a comprehensive map of land parcels for all land parcels in Indonesia, both registered and unregistered, it will be difficult to realize a certificate. electronic. For this, the Ministry of Agrarian Affairs and Spatial Planning first needs to ensure the availability and validity of data and maps of land parcels throughout Indonesia. There is not an inch of land in Indonesia that is not mapped and not validated.
2. The validity of data on land ownership in Indonesia does not solely depend on the Ministry of Agrarian Affairs and Spatial Planning, because there are links with other institutions that will also influence the validity of the land database, for example, population data and civil registration. Reality has so far proven that population data in Indonesia is not in order and there is still a lot of data that is not updated so that to guarantee the validity of land data, it is necessary to ensure the validity of population data throughout Indonesia. In addition, it is also necessary to pay attention to the validity of the data in the context of Land and Building Tax (PBB) because the land registration process will be related to state revenues both in the form of PBB and in the form of Land and Building Rights Acquisition Fees. Therefore, before applying for an electronic certificate,

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<sup>10</sup>Putra, PS, and SH, M. (2019). Obstacles and Challenges to Agrarian Reform in Karawang Regency, Scientific Journal of Law, Scientific Study of Law, Vol 4 Number 1, p. 110.

<sup>11</sup>Yubaidi, RS (2016). The Future of Land Ownership Regulation in Indonesia., International Journal of Multicultural and Multireligious Understanding, Vol 6 Number 6, p. 712.

3. There is still a need to improve legal norms related to electronic certificates, it is necessary to re-synchronize and harmonize laws and regulations so as not to create new problems starting from the registration process to processing the data, because certificates are proof of ownership that have legal force.
4. Efforts to disseminate electronic certificates to various parties are still not optimal, so they are still worried about the benefits and legal protection, including the Legislature; Thus, there is no full support from the Legislature for the application of electronic certificates.
5. Technologically, the use of digitalization will only be easily accessed by urban communities and the upper middle class, while in rural areas access to digitalization technology is still difficult and uneven, coupled with some rural communities who are still technologically illiterate; Thus, firstly, technology education must be carried out to the community and the completeness of the facilities and infrastructure.
6. Information Technology Systems (IT) managed by the Government, such as: electronic Identity Cards (e-KTP), including the Ministry of ATR/BPN, do not appear to be completely secure. Security aspects and reform of the land bureaucracy have not been guaranteed, so that data on land ownership has the potential to be lost and vulnerable to misuse.

Considering that there are still many obstacles in the implementation of making electronic land certificates, the government made several solutions, namely on March 23 2021, Commission II of the House of Representatives (DPR) stated that Commission II of the DPR RI and the Minister of ATR/BPN agreed to postpone the enforcement of Ministerial Regulation ATR/BPN Number 1 2021 concerning Electronic Certificates, and immediately evaluate and revise provisions that have the potential to cause problems in society. This evaluation and revision is related to:

1. Synchronize and complete the land database.
2. Solve population problems such as E-KTP.
3. Review and synchronize several laws and regulations related to land certificates.
4. Optimizing internet access throughout Indonesia to remote villages.
5. Outreach to the community.

The electronic land certificate program will continue because it is part of a series of digital land service transformations initiated by the Ministry of Agrarian Affairs/BPN. This digital service aims to make the Ministry of ATR/BPN a world-class spatial planning and land management institution. This digital transformation is in line with President Joko Widodo's direction, so that public services in the land sector become easier by utilizing digital platforms. Therefore, the electronic certificate program will continue, of course, at the right time, where all stakeholders can understand the benefits and guarantees of legal protection properly, and synchronization and harmonization of legislation regarding electronic certificates has been carried out.

Data on the ownership rights of electronic land certificates is personal data that must be protected. Regulations on personal data protection aim to protect the interests of the public against misuse of personal data, especially when it relates to securities in the form of land certificates.

Philipus M. Hadjon formulates the principle of legal protection for the people of Indonesia by combining the Pancasila ideology with the western concept of legal protection for the people. The concept of legal protection for western people is based on the concepts of recognition, protection of human rights, rechtsstaat concepts, and the rule of law. He applies western conceptions as a frame of mind with Pancasila as an ideology and a basic philosophy. So that the principle of legal protection for the people of Indonesia is the principle of recognition and protection of human dignity which originates from Pancasila and the principle of a legal state based on Pancasila.<sup>12</sup> Therefore, legal protection based on Pancasila means recognition and legal protection of human dignity on the basis of the values of Belief in One Almighty God, humanity, unity, deliberation and social justice. These values give birth to the recognition and protection of human rights in a unitary state that upholds the spirit of kinship in achieving common prosperity.

Legal protection is an illustration of the functioning of the legal function to realize legal objectives, namely justice, benefits and legal certainty. Legal protection is a protection given to legal subjects in accordance with the rule of law, both preventive (prevention) and repressive (coercion) forms, both written and unwritten in order to enforce legal regulations. According to Philipus M. Hadjon, legal protection for the people includes two things, namely: <sup>13</sup>

#### 1. Preventive Legal Protection

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<sup>12</sup>Philip Hadjon. (1987). Protection for the People in Indonesia, Surabaya: Knowledge Development.

<sup>13</sup>Ibid.

In this preventive legal protection, legal subjects are given the opportunity to submit objections or opinions before a government decision gets a definitive form. The goal is to prevent disputes from occurring. Preventive legal protection is very significant for government actions based on freedom of action because with preventive legal protection the government is encouraged to be careful in making decisions based on discretion. In Indonesia there is no specific regulation regarding preventive legal protection. However, when viewed from its purpose as prevention, preventive legal protection in the protection of electronic land certificate ownership data is as follows:

a. Law Number 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions; The protection of electronic land certificate ownership data is the same as the protection of personal data in an electronic system. This law includes protection from unauthorized use, protection by electronic system operators and protection from illegal access and intervention. That is, the use of any information through the media or electronic systems concerning a person's personal data must be carried out with the consent of the person concerned. Therefore, it is necessary to guarantee the fulfillment of personal data protection by requiring each Electronic System Operator to delete irrelevant Electronic Information and/or Electronic Documents under its control at the request of the person concerned based on a court order. Under this law, any person who suffers a loss may file a lawsuit on a representative basis against the party operating the Electronic System and/or using Information Technology. In addition, the parties can also resolve disputes through arbitration or other alternative dispute resolution institutions in accordance with statutory provisions.

b. Regulation of the Minister of Communication and Informatics No. 20 of 2016 concerning Protection of Personal Data; In the Regulation of the Minister of Communication and Information No. 20 of 2016 concerning Protection of Personal Data, personal data is certain individual data that is stored, maintained, and kept true and protected by confidentiality.

c. Government Regulation Number 71 of 2019 Implementation of Electronic Systems and Transactions; Electronic System Operators are also required to maintain the confidentiality, integrity, authenticity, accessibility, availability and traceability of an Electronic Information and/or Electronic Document in accordance with the provisions of laws and regulations. In addition, Electronic System Operators are required to educate Electronic System users regarding the rights, obligations and responsibilities of all related parties, as well as complaint review procedures. Furthermore, Electronic System Operators are also obliged to protect their users and the general public from losses caused by the Electronic Systems they operate.

## 2. Repressive Legal Protection

Repressive legal protection aims to resolve disputes. The handling of legal protection by the General Courts and Administrative Courts in Indonesia is included in this category of legal protection. The principle of legal protection against government actions rests on and originates from the concept of recognition and protection of human rights because according to history from the west, the birth of concepts regarding the recognition and protection of human rights is directed at limitations and placing the obligations of society and the government. The second principle that underlies legal protection against acts of government is the rule of law principle. Associated with the recognition and protection of human rights,

The emergence of rights and obligations between the operator of the electronic system for land certificate ownership data (the government) and the community is when the community agrees to the terms of service (terms of service) provided by the electronic system operator. That way there has been an engagement that occurred between the parties. The term of service is an electronic contract that is given by the electronic system operator to the public to fulfill or follow the regulations made by the electronic system operator. In this case, the community entrusts their personal data in the form of electronic land certificates to be processed by the electronic system operator, in this case the government through the National Land Agency.

The Civil Code clearly distinguishes between engagements arising from agreements and engagements arising from laws. The legal consequences of an agreement born from an agreement are indeed desired by the parties, because indeed the agreement is based on an agreement, namely the conformity of the will between the parties making the agreement. As for the legal consequences of an agreement born from a law, the parties may not want it, but the legal relationship and its legal consequences are determined by law. If the agreed agreement is violated, a breach of contract can be filed, because there is a contractual relationship between the party causing the loss and the party suffering the loss.

Based on the statement above, it seems clear that an agreement arising from electronic land certificate data is an agreement that arises because of a law, so if there is a leak of data, the public can file a lawsuit against the government, in this case the National Land Agency (BPN).

## 4. Conclusion

Legal certainty of land certificates in the form of electronic documents can be categorized as electronic evidence which has the same evidentiary power as

written/written evidence made on paper and the printed results as a form of valid proof. This is a reference to the legitimacy of the position of electronic land certificates to be used as evidence in court as long as the data stored in the electronic system does not change (guaranteed its integrity) according to what is in the land book. Legal protection that can be given to data on ownership of electronic land certificates consists of: a) Preventive legal protection in the form of guaranteed fulfillment of personal data protection by obliging Electronic System Operators, in this case the National Land Agency (BPN), to maintain the confidentiality of public personal data and keep it from happening leakage. b) Repressive legal protection, namely if there is a data leak, the public can file a lawsuit against the government, in this case the National Land Agency (BPN).

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