

## Analysis of Legal Protection for Electronic-Based Land Certificate (E-Certificate) Holders in Land Law in Indonesia

**Muhammad Jeppry Lius**

Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail:

[Jepprylius@gmail.com](mailto:Jepprylius@gmail.com)

**Abstract.** *This research aims to identify, study and analyze legal protection for electronic-based land certificate holders in land law in Indonesia. Apart from that, this research also aims to identify, study and analyze the obstacles faced in efforts to protect the law, as well as finding solutions to deal with these obstacles. The method used is normative juridical legal research. The data used consists of primary data such as the 1945 Constitution, Law Number 5 of 1960 concerning Basic Agrarian Principles Regulations, Law Number 11 of 2008 concerning Information and Electronic Transactions, Government Regulation Number 24 of 1997 concerning Land Registration, Government Regulation Number 71 of 2019 concerning Implementation of Electronic Systems and Transactions, as well as secondary data which includes books and other supporting documents. Data collection was carried out through Document Study and Literature Study. Data analysis was carried out using qualitative descriptive methods. The research results show that legal protection for electronic-based land certificate holders does not cause problems, because the certificate is recognized as valid proof of ownership based on the Electronic Information and Transactions Law (UU ITE), especially regulated in Article 6. Its validity is also strengthened in Article 5 Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) Number 1 of 2021.*

**Keywords:** Certificate; Law; Protection.

### 1. Introduction

Land has a central role in the economy and life of all humans, including the Indonesian people. The many developments in all areas of life make land a commodity that has a very high economic value and is difficult to control.<sup>1</sup>Regulations regarding land in Indonesia are through regulations known as UUPA (Basic Agrarian Law) in 1960, which is a legal policy that establishes the main foundations in agrarian affairs.<sup>2</sup>Article 1 paragraph (2) of the UUPA states, "All the earth, water and space, including the natural resources contained within

<sup>1</sup>Adrian Sutedi, 2018, Transfer of Land Rights and Its Registration, Sinar Grafika: Jakarta, p. 22.

<sup>2</sup>Law Number 5 of 1960 concerning Basic Agrarian Principles.

the territory of the Republic of Indonesia, as a gift from God Almighty, are the earth, water and space of Indonesia and constitute national wealth."<sup>3</sup>

The government ensures legal certainty of land ownership by requiring landowners to register their property. This process results in the issuance of land certificates, which serve as official and strong evidence of their ownership rights to the land. In an effort to ensure legal certainty of land ownership, the Indonesian Government issued Government Regulation Number 24 of 1997 concerning Land Registration.

In accordance with Article 19 paragraph (1) of the UUPA, this includes land registration throughout the country. This registration activity involves a regular ongoing process, including data collection and processing, bookkeeping, presentation, and maintenance of physical and legal information. The information is recorded in the form of maps and lists that cover all aspects of the property including land and apartment units, with land certificates serving as official documents that confirm the owner's rights to the property and any legal burdens that may exist.<sup>4</sup>

Along with the advancement of the era and increasingly sophisticated technology, all aspects of life have adopted more efficient and modern technology. This includes the land registration system, which has now switched to electronic methods. This progress is known as E-Certificate. Electronic land registration has been formalized through the Regulation of the Minister of ATR/BPN Number 3 of 2023, which is a reference in the implementation of the system. Electronic Certificate, or called Sertipikatel is a Certificate issued through an electronic system in the form of an electronic document whose Physical Data and Legal Data have been stored in BT-e1.<sup>5</sup>

Government Regulation Number 18 of 2021, specifically Article 84, stipulates that all land registration activities must be carried out electronically. This regulation was drafted with the aim of increasing efficiency and transparency in land administration, both in initial land registration and maintenance of land registration data. The adoption of this new policy is expected to facilitate the online land registration process, reducing the need for people to come directly to the land office.

The introduction of electronic certificates is one of the government's steps in improving modern land services, with the aim of improving the performance of the business sector and public services to the community.<sup>6</sup> Although the convenience offered by land digitization is recognized, concerns have arisen among the public. There are concerns that electronic land certificates can be an

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<sup>3</sup>Article 1 paragraph (2) of Law Number 5 of 1960 concerning Basic Agrarian Regulations

<sup>4</sup>FX Sumarja, 2015. Land Registration Law, Bandar Lampung, p. 18.

<sup>5</sup>Article 1 paragraph (9) of ATR/BPN Regulation Number 3 of 2023 concerning the issuance of electronic documents in land registration activities.

<sup>6</sup>Indonesia baik.id, "Electronic Certificates to be Launched Soon" [https://indonesiabaik.id/infografis/sertifikat elektronik-segera dimainkan](https://indonesiabaik.id/infografis/sertifikat-elektronik-segera-dimainkan), accessed May 2024.

easy target for hackers, given the vulnerability of security in the digital realm.<sup>7</sup> However, a new problem has emerged, namely the problem of personal data security, with the unclear protection and the extent to which this protection is effective. This also raises the perspective that the uncertainty of legal protection for electronic land certificates, both in terms of guarantees of legal protection for land data in Indonesia and the legal rights of electronic land certificate owners. Land certificates are important legal evidence both physically and legally. Land ownership must be in accordance with that stated in the certificate, if it is not in accordance or inconsistent, the certificate can be canceled so that it cannot be used as evidence in court. Therefore, it is important to ensure the conformity of the landowner data in the certificate. Electronic certificates are used as valid evidence according to Indonesian procedural law.<sup>8</sup>

## 2. Research Methods

This study uses a problem-solving approach in the form of a normative legal approach. This approach is an approach that is carried out by collecting data and studying the main legal basic materials by examining the principles and principles of law, legal theories, norms and regulations, opinions of legal experts and also other library materials related to this study.<sup>9,10</sup> The data collection methods used include secondary data consisting of primary, secondary and tertiary legal materials.

## 3. Results and Discussion

### 3.1. Legal Protection for Electronic-Based Land Certificate Holders in Land Law in Indonesia

The new land registration process produces official documents that validate ownership, including certificates for land that has been occupied and ownership rights for units within a multi-storey housing complex. These certificates are documents that confirm land rights in accordance with the provisions of Article 19 paragraph (2) letter c of the Basic Agrarian Law, as well as mortgage rights that have been recorded in the relevant land records.<sup>11</sup> The certificate is official evidence that has significant evidentiary power related to physical and legal information that corresponds to the data recorded in the land inspection and relevant land ownership documents. In other words, unless there is evidence to the contrary, the physical and legal information contained in the certificate must

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<sup>7</sup>Kontan.co.id, "Land Experts Say There Are 2 Weaknesses of Electronic Certificates, What Are They?" <https://amp.kontan.co.id/news/pakar-pertanahan-sebut-ada-2-kelemahan-sertifikat-elektronik-apaitu>, accessed May 2024.

<sup>8</sup>Anna Yulianti, 2022, *The Urgency of Digitizing the Land Registration System*, Alumni Publisher: Bandung, p. 14.

<sup>9</sup>Soerjono Sockanto, 2001, *Normative Legal Research: A Brief Review*, Raja Grafindo Persada: Jakarta, p. 275.

<sup>10</sup>Soerjono Soekanto and Sri Mamudji, 2007, *Normative Legal Research (A Brief Review)*, Raja Grafindo Persada, Jakarta, page 13.

<sup>11</sup>Santoso, Urip. 2015. *Agrarian Law: A Comprehensive Study*. Kencana: Jakarta, page 43.

be considered valid, both in daily transactions and in legal proceedings in court.<sup>12</sup> Indonesia follows a land registration system that is negative in nature but oriented towards positive aspects. This means that the land registration system allows claims of land rights without having to actively register the claim, but on the other hand, the government attempts to verify the claims of land rights. According to Government Regulation Number 10 of 1961, legal certainty is given to parties who do have land rights, even if the rights are not yet recorded in the land book. The publication system in land registration raises questions about the extent to which the public can trust the accuracy of the data provided by the state as a result of the land registration process.

In the process of issuing certificates, the law provides protection to certificate holders. However, the truth of the physical and legal data in the land certificate cannot be guaranteed, although the court must accept the information as true unless there is evidence to the contrary. This provides an opportunity for other parties who feel they have the same claim to file an objection to the issuance of the certificate, as regulated in Article 32 paragraph (2) of Government Regulation Number 24 of 1997. The article states that if a land certificate is legally issued in the name of an individual or legal entity who owns the land in good faith and controls it in real terms, other parties who feel they have rights to the land can no longer claim those rights if within 5 years of the issuance of the land certificate, they do not file a written objection to the certificate holder and the Head of the relevant Land Office or do not file a lawsuit with the court regarding control of the land or the issuance of the certificate.<sup>13</sup>

Article 32 paragraph (2) of Government Regulation Number 24 of 1997 states that legal protection for land certificate holders can be provided if the following conditions are met:<sup>14</sup>

Certificates are legally issued in the name of a person or legal entity. The definition of in the name of a person or legal entity is a certificate issued by the District/City Land Office for land registration objects in the form of land rights.

Land acquired in good faith. The purpose of the principle of good faith is to protect people who in good faith acquire a right from someone they think is the legitimate right holder of that right.

Land is actually controlled. Land rights are physically and actually controlled and used by the land rights holder himself, or used by another person or legal entity that has received approval from the land rights holder.<sup>15</sup>

Within 5 (five) years since the certificate was issued, no one has submitted a written objection to the certificate holder and the Head of the local District/City Land Office or has filed a lawsuit in court regarding land ownership or the issuance of the certificate.

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<sup>12</sup>Harsono, Boedi. 2018. Indonesian Agrarian Law: History of the Development of the Basic Agrarian Law, Contents and Implementation. Jakarta: Trisakti University.

<sup>13</sup>Article 32 paragraph (2) of Government Regulation Number 24 of 1997.

<sup>14</sup>Urip Santoso, Agrarian Law: ..., p. 319.

<sup>15</sup>Urip Santoso, Registration and Transfer of Land Rights, p. 281.

In early 2021, the Minister of Agrarian Affairs and Spatial Planning/Head of BPN issued a policy to issue land ownership documents in electronic format called Electronic Certificates (e-Certificates). This policy aims to implement the provisions of the Job Creation Law (Law No. 11 of 2020, specifically in the Land cluster) which mandates that land services will be provided in electronic format, including ownership documents. This policy was then further regulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of BPN Number 1 of 2021 concerning Electronic Certificates and was later revoked and replaced by the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of BPN Number 3 of 2023 concerning the Issuance of Electronic Documents in Land Registration Activities.<sup>16</sup>

Article 35 paragraphs (5), (6), and (7) stipulate that gradually, land registration data will be stored and presented using electronic equipment and microfilm. Document recordings produced by electronic equipment or microfilm will have evidentiary force after being signed and marked with an official stamp by the Head of the relevant Land Office. The form, method of storing, presenting, and deleting these documents, as well as the storage and presentation of land registration data using electronic equipment and microfilm, are determined by the Minister. Thus, the National Land Agency (BPN) has begun to prepare itself to provide electronic-based land registration services.<sup>17</sup>

The importance of recognizing the role of electronic evidence in the process of proving civil cases is not only related to legal validity. The process of proving both criminal and civil cases has a crucial role in ensuring justice. Recognition of the position or existence of electronic evidence is important to ensure protection and legal certainty for all parties involved.

In the Indonesian civil procedure system, the types of evidence are regulated by various laws, such as the *Herziene Inlandsch Reglement (HIR)* and *Rechtreglement voor de Buitengewesten (RBg)*, which are also included in the provisions of the Civil Procedure Code (KUHPer). Various types of evidence in civil cases include written evidence, witness testimony evidence, presumptive evidence, confession evidence, and oath evidence.<sup>18</sup>

According to Article 5 of Law Number 11 of 2008 concerning Information and in the Law concerning Electronic Transactions, it is stated that Electronic Information, Electronic Documents, and their printouts are recognized as valid legal evidence. This is expanded from the types of evidence recognized in accordance with the provisions of the applicable procedural law in Indonesia. The concept of "expansion" is related to the types of evidence stipulated in

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<sup>16</sup>Ana Silviana, 2021. "The Urgency of Electronic Land Certificates in the Land Registration Legal System in Indonesia," *Administrative Law & Governance Journal* Volume 04 (March): 56.

<sup>17</sup>Ibid.

<sup>18</sup>Nandatama Ayu Lafitri, 2020. "Legal Certainty of Electronic Mortgage Certificates in Evidence Law in Courts According to Civil Procedure Law," *Jurnal Pro Hukum* Volume 9 Number 2 (December): 11.

Article 5 paragraph (1) of the ITE Law. Expansion here means:<sup>19</sup> a. Adding types of evidence that have been regulated in criminal procedure law in Indonesia, such as the Criminal Procedure Code. Electronic Information and/or Electronic Documents as Electronic Evidence are additions to the various evidence regulated in the Criminal Procedure Code; b. Expanding the scope of evidence that has been regulated in criminal procedure law in Indonesia, such as in the Criminal Procedure Code. Printouts of Electronic Information or Documents are one form of written evidence regulated in the Criminal Procedure Code.

Article 5 paragraph (4) of the ITE Law regulates formal requirements related to electronic evidence, which states that Electronic Information or Documents do not have to be in written form in accordance with legal regulations. Meanwhile, material requirements are regulated in Article 6, Article 15, and Article 16 of the ITE Law, which state that for electronic evidence to be accepted in court, electronic information or documents must ensure their availability, integrity, and authenticity.<sup>20</sup> Electronic land certificates, as proof of electronic ownership recognized by the ITE Law, especially as regulated in Article 6, from a legal perspective the issue of proving Electronic Land Certificates is not a problem.<sup>21</sup>

Data leaks (hackers) that occurred according to the Ministry of ATR/BPN have prepared anticipation of data leaks through cooperation with BSSN. Electronic land certificates will implement electronic signatures and use cryptographic encryption technology guaranteed by the National Cyber and Crypto Agency (BSSN). BSSN provides support for data and information exchange security by utilizing Electronic Certificates to guarantee authentication, data integrity and denial of data exchanged. Electronic Certificates provide data authentication guarantees because digital certificates can directly show the owner of the certificate in a document, then integrity because electronic certificates guarantee data integrity by seeing if there is a change in the signed document, and anti-denial because it can be directly proven at the time of signing and can deny falsification of data integrity.

According to Virgo Eresta Jaya, Head of the Center for Land Data and Information, Spatial Planning, Sustainable Food Agriculture Land (LP2B), the use of electronic land certificates will increase security. This is due to the ability of electronic technology to prevent forgery and make it difficult to deny or forge. In electronic certificates, digital signatures will be applied. When digital signing is performed, cryptographic operations will attach the digital certificate and the document to be signed into a unique code (hashcode).<sup>22</sup> Registered landowners may be concerned about the implementation of Electronic Land Certificates,

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<sup>19</sup>Jousua Sitompul, 2012. *Cyberspace, Cybercrimes, Cyberlaw: A Review of Criminal Law Aspects*, Tatanusa: Jakarta, p. 65.

<sup>20</sup>Budi Suhariyanto, 2013. *Information Technology Crime (cybercrime): Urgency of Regulation and Legal Loopholes*, Raja Grafindo Persada: Jakarta, p. 10.

<sup>21</sup>Ibid.

<sup>22</sup>"Electronic Land Certificate Guaranteed Safe, Uses BSSN Code System So It's Hard to Counterfeit," <https://www.liputan6.com/bisnis/read/4474384/sertifikat-tanah-elektronik-dijamin-aman>. February 03, 2021. Downloaded May 03, 2024.

because there is a concern that the Head of the Land Office will withdraw their analog certificates. However, according to a misinterpretation of Article 16 of the Regulation of the Minister of ATR/BPN Number 1 of 2021 concerning Electronic Certificates, the withdrawal of analog certificates by the Head of the Land Office actually occurs after the certificate owner (landowner) replaces the analog certificate with an Electronic Certificate. There is no order or prohibition for the Head of the Regency/City Land Office to unilaterally withdraw analog certificates immediately after the regulation is enacted. Analog certificates will remain valid until they are converted into Electronic Certificates. When the certificate is converted into an electronic document, a stamp will be given indicating that the certificate has been converted into an electronic document.

### **3.2. Obstacles Faced in Legal Protection Efforts for Electronic-Based Land Certificate Holders in Defense Law in Indonesia.**

The implementation of electronic land certificates has several obstacles faced in the legal protection efforts for electronic-based land certificate holders in land law in Indonesia, these obstacles include. The first is that the implementation of electronic certificates cannot be carried out directly without having an accurate database of land plot maps throughout Indonesia. Without the existence of complete and valid land plot maps for all land in Indonesia, both registered and unregistered, it will be difficult to implement electronic certificates.<sup>23</sup>Second, the validity of land ownership information in Indonesia does not only depend on the Ministry of Agrarian Affairs and Spatial Planning, but also involves other institutions that have an impact on the integrity of the land database, such as population data and civil registration. The real situation shows that population data in Indonesia is still not well managed and much information is not updated. Third, improvements are needed in legal norms related to electronic certificates to ensure harmony and alignment in related laws and regulations. This aims to prevent new problems from arising throughout the data registration and processing process, considering that certificates are proof of ownership that has significant legal impacts. The fourth obstacle is that efforts to socialize electronic certificates to various parties are still not optimal, so they are still worried about the benefits and legal protection, including the Legislative. Fifth, in terms of technology, the use of digitalization will only be easily accessible to 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. The last obstacle is the Information Technology (IT) System managed by the Government, such as: electronic Population Identity Card (e-KTP), including the Ministry of ATR/BPN, does not seem to be completely secure. Security aspects and land bureaucratic reform are not yet guaranteed.

### **3.3. Solutions to Facing Obstacles to Legal Protection for Electronic-Based**

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<sup>23</sup>"Electronic Land Certificates, a New Era of Land Registration in Indonesia, Between Legal Certainty and Public Anxiety" <https://manadopost.jawapos.com/opini/09/02/2021/>. February 9, 2021. Downloaded May 03, 2024.

### **Land Certificate Holders in Land Law in Indonesia**

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 implementation of the Regulation of the Minister of ATR/BPN Number 1 of 2021 concerning electronic certificates, and immediately conduct an evaluation and revision of provisions that have the potential to cause problems in the community. This evaluation and revision are related to:

- a. Synchronizing and completing land databases
- b. Resolving population issues such as E-KTP.
- c. Reviewing and synchronizing several laws and regulations related to land certificates
- d. Optimizing internet access throughout Indonesia, even to remote villages
- e. Conducting outreach to the community

Other reasons underlying the decision to postpone the implementation of Ministerial Regulation Number 1 of 2021 concerning electronic certificates include:

- a. At the request of Commission II of the Indonesian House of Representatives, because until now the Indonesian House of Representatives has not received a report regarding the electronic certificate program from the Ministry of ATR/BPN.
- b. There are concerns from various parties regarding the recurrence of the e-KTP case, which will happen again with electronic land certificates.
- c. There are concerns about the weakness of the electronic certificate security system, because from a technical perspective electronic land certificates are very vulnerable and easily hacked by hackers.
- d. The four digital land services that have been implemented, namely Electronic Mortgage Rights (HT-el), Land Value Zone Information (ZNT), Making of Land Registration Certificates (SKPT), and Checking of Land Certificates are considered to have not yet achieved maximum results.
- e. There are many perceptions outside of context that cause public unrest, especially Article 16 paragraph (3) of PERMEN ATR/BPN Number 1 of 2021.

### **4. Conclusion**

Legal protection for electronic land certificate holders does not pose a problem, because the certificate is recognized as valid electronic proof of ownership based on the Electronic Information and Transactions Law (UU ITE), especially regulated in Article 6. Its validity is also not in doubt, especially after being strengthened in Article 5 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) Number 1 of 2021. For security issues, the Ministry of ATR/BPN has anticipated potential data leaks through collaboration with the National Cyber and Crypto Agency (BSSN). The obstacles faced in welcoming the electronic land certificate program are the absence of a valid database regarding land plot maps throughout Indonesia so that it will be difficult to realize electronic certificates.



Solutions to overcome obstacles in legal protection for electronic-based land certificate holders in land law in Indonesia include conducting revisions and evaluations. These evaluations and revisions are related to Synchronizing and completing land databases, resolving population issues such as E-KTP, Reviewing and synchronizing several laws and regulations related to land certificates, Optimizing internet access throughout Indonesia to remote villages, and Conducting outreach to the community.

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