



Digitizing Land Certificates to Anticipate the Mafia and Realize Legal Certainty

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Abstract

Indonesia's growth toward the digital era can no longer be applied to achieve modernization in the land sector, starting with the application of electronic-based land services, particularly the digitization of land certificates. By implementing electronic-based land services, the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency's Regulation No. 1 of 2021 concerning Electronic Certificates seeks to modernize land registration to enhance measures of the community's access to public services and ease of doing business. The issue with this research is the factors that prevent establishing a program for digital certificate holders to preserve their legal and land rights. Technically speaking, electronic certificates are more secure than analog (manual) ones when it comes to security. This added value will benefit holders of electronic land certificates by reducing the likelihood of certificate fraud, preventing illegal land transactions like those carried out by land mafias, and making it easier to transact with land parcels.

1. Introduction

Indonesia is a rural (agricultural) nation with enormous natural resources. Unfortunately, the population has not completely benefited from such affluence. According to Article 1 Paragraph (1) of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (henceforth referred to as UUPA), all land inside our country's territory is the common land of all Indonesians, who are united to form the Indonesian nation (Lawalata et al., 2021: 18).

Land registration in Indonesia consists of two stages: initial land registration and the maintenance of land registration data. Land registration was conducted in two methods for the first time: systematized land registration and sporadic land registration. Simultaneously with Government initiatives, systematic land registration is carried out; in this case, the National Land Agency (henceforth referred to as BPN) registers uncertified land parcels based on a long-term and annual work plan carried out in the village or subdistrict area in accordance with Ministerial

regulations. Agrarian and Spatial Planning/National Land Agency Director (henceforth referred to as ATR/Ka.BPN).

Land registration has been in effect in Indonesia for roughly 61 years, as of 2021. By 2020, just 82 million of Indonesia's approximately 126 million land parcels will have been registered. This means that 35% of unreported land is still available, according to Suyus Windayana, Director General (Dirjen) of Land Rights and Registration (Fadli, 2020). The President's Complete Systematic Land Registration Program (PTSL) aims to register all land in Indonesia by 2025. If successful, this would represent a 100% success rate.

One of the goals of issuing the UUPA is to establish legal clarity (Rechts cadastral) for the land rights of the Indonesian population. Article 19 of the UUPA mandates the implementation of land registration across Indonesia in order to ensure legal clarity. By registering the land, the landowner will receive a document of proof of rights as evidence of ownership of data whose legal certainty will be assured. A land certificate is the documentation of rights required by PP 24 of 1997. Land certificates issued by the LoGA are supported by substantial proof (Article 19 paragraph 2 letter C). This indicates that the evidence supporting this certificate is not absolute, but strong. As long as the physical and legal data are consistent with the Land Book and Measurement Certificate, the data is regarded accurate unless proven otherwise in court. Land certificates can still be altered in Indonesia if there are legal and/or administrative flaws. This option offered legal protection to individuals who acquire or own land in good faith (Article 32 PP 24 of 1997).

Previously a paper-based procedure, technological advancements have transformed the land registration system into an electronic one. Originally analog (manual) market transactions and public services in Indonesia have been replaced with electronic-based services as a result of advances in information and communication technology. In 1997, electronic-based public services were provided through the Land Office Computerization (LOC) program, which later changed its name to Computerized Land Activities (hence referred to as KKP); this KKP also evolved from KKP-Desktop to Geo-KKP to a web application/KKP-Web. This land service continues to be enhanced and developed, then transitioned to a digital format. This transition, in Zevenbergen's opinion, has occurred (2004, 11-24). Due to the fact that land registration and cadastral functions are regulated separately and do not work effectively together, technological or other improvements, only repairing one or several parts as necessary, should be treated as an integrated system and studied, analyzed, and improved as a whole.

Implementing electronic-based land services to the documents created in electronic records is necessary to realize the modernisation of land services. Sofyan Djalil, the Minister of Agrarian Affairs, signed ATR/BPN Regulation Number 1 of 2021 concerning Electronic Certificates on January 12, 2021, setting in motion the policy for the issue of electronic land certificates. Some parties think electronic certificates are not needed because there are still many land disputes, either because the credentials are forged or overlapping certificates; registering land throughout

Indonesia is a top priority to resolve them. Electronic certificates are not in form or form, and the main problem is electronic processing from the beginning of land registration to the issuance of certificates and data security issues to protect rights holders, as well as related to the validity of electronic certificates in court proceedings.

Many land conflicts cause problems for the society and are caused by factors such as the falsification of land certificates, the existence of duplicate or overlapping land certificates, and the prevalence of the land mafia. The community can no longer rely on land rights certificates as a source of legal certainty. Consequently, a new legal innovation that can keep up with the increasingly complicated dynamics of society is desperately needed by the government. Because if there is a transition in society, the legal needs of the community also require changes and additions to both positive legal rules and legal institutions (Yusra, 2013: 63-71). If not, then there will be legal stagnation as the adage is known that the law will always lag behind the times (*het Recht think Achter de feiten aan*).

2. Methods

The research employed in this study is normative legal research. Normative legal research is the process of locating a rule of law, legal principles, and legal doctrines to resolve legal problems (Marzuki, 2016: 35). The method utilized in this study is the statutory method. This legal strategy considers all rules and regulations associated with resolved legal matters (Marzuki, 2016: 93). The Case Approach follows. This case-based method is conducted by studying cases connected to the topic and has become a binding legal decision. The next approach is the Conceptual Approach, which differs from the perspectives and theories that evolve in legal science. Following the study objectives, the conceptual approach explores and analyzes the conceptual and theoretical framework (Marzuki, 2016: 94). This study's legal sources are a qualitative analysis of descriptively documented primary and secondary legal resources. The technique for collecting legal materials consists of conducting document studies or utilizing literature to acquire the necessary legal materials generated from a variety of primary, secondary, and tertiary legal materials. Legal materials from literary studies and documents are processed and descriptively examined; subsequently, they are integrated with theories, concepts, and legal norms associated with these concerns.

3. Results And Discussion

3.1 Digitizing Land Certificates for Legal Certainty

First-of-its-kind certificates of proof of rights, including certificates on land parcels with preexisting rights and certificates of ownership rights over flat units, are produced as a result of land registration activities. The certificate is evidence of land and mortgage rights that have been entered in the appropriate land book, as required by Article 19, paragraph (2), letter c of the BAL.

The need for legal certainty is assumed to be met by the very character of the law itself, which is always open and dynamic in order to keep up with the dynamics of changing community needs. A fundamental theory of why the law exists is necessary for establishing legal certainty. Ahmad Ali breaks down the grand strategy into three distinct parts: western theory (grand western theory), which incorporates both classical and current ideas, eastern theory (legal theories), and Islamic philosophy. Ethical theory, which holds that the only purpose of the law is to realize justice, utility theory, which holds that the only purpose of the law is for utility, and legalistic theory, which can be understood as the sole purpose of the law being to create certainty punishment, make up the grand Western theories (legal certainty). Legal certainty is also something new at the level of legal objectives, which appeared simultaneously as the entry of the modern era where the law had begun to be written down positively and known by the public. Legal certainty concerns the issue of law *sicherheit* Dutch *das Recht* which ensures that a certain act is a crime, and law *sicherheit* Dutch *das Recht*, namely certainty about the law itself.

The LoGA governs a number of fundamental aspects, one of the most fundamental being the various land rights and ownership structures that can exist. Property rights, cultivation rights, building use rights, usage rights, leasing rights, land clearance rights, forest product collection rights, and other rights other than these will be determined in accordance with Article 16, paragraph (1) of the UUPA. Conforming to the law and being only transitory. Rights can be acquired through inheritance, purchase, exchange, or gift. Registration at BPN is then required to receive a certificate that provides absolute assurance of ownership of the aforementioned land rights. The Government Regulation 24 of 1997 on Land Registration governs the obtaining of land rights certificates.

If legal Supposertainty is associated with current conditions, modern times accompanied by the rapid development of science, technology, and information, a legal. In that case, the product is expected to produce a statutory regulation in terms of substance and application that can guarantee legal certainty. One of the legal products expected to keep pace with these developments, in this case in the land sector, is the ATR/Ka.BPN Regulation Number 1 of 2021 concerning Electronic Certificates. The way to determine whether the Ministerial Regulation (from now on referred to as the Ministerial Regulation) guarantees legal certainty is to study it in accordance with the meaning of legal certainty itself.

The term "legal certainty" refers to four different aspects of the law: first, that the law is clear and present in the form of statutes and regulations; (*gesetzliches recht*). Also, these regulations are grounded on reality, which brings us to our second point (*tatsachen*). Since its enactment on January 12, 2021, the ATR/BPN Regulation Number 1 of 2021 concerning Electronic Certificates has been included in the Indonesian legal hierarchy of rules and regulations as established by Law Number 12 of 2011. Statutory regulation encompasses the role of a Ministerial Regulation, whether it was produced in response to directives from more senior laws and regulations or was formed due to authority in specific areas of government business.

The alternative definition refers to the process by which factual information is used to create legal norms (tatsachen). The relevant facts are related conditions that constitute the context for the necessity of establishing rules and regulations. This is in reference to the first ATR/Ka.BPN Regulation on Electronic Certificates, due out in 2021. To accomplish the modernization of land services and enhance convenience indicators, it is required to maximize the use of information and communication technology by introducing electronic-based land services. One measure of a country's progress toward modernity is its ability to take advantage of technological and informational improvements, and the current state of land services shows that this area still has room for growth.

The third meaning is that the fact must be formulated in a way that is clear and easy to apply. Regulation of ATR/Ka.BPN Number 1 of 2021 concerning Electronic Certificates is structured in accordance with the technique of drafting regulations, starting from the title, the preamble consisting of phrases with the grace of God Almighty, and the position of forming the regulations, namely ATR/Ka.BPN of the Republic of Indonesia has a legal basis in which this regulation consists of 14 legal bases, after which the opening section is closed with a dictum. After the description of Candy's torso enters the closing section and attachments.

The fourth meaning is that positive law should not change frequently. This meaning is not in terms of limiting a rule from legal stagnation. However, as long as at the level of application of this regulation, its implementation is still effective in society. Following the times, the regulation has no urgency to be changed. Regarding the ATR/Ka.BPN Regulation Number 1 of 2021 concerning Electronic Certificates which at the level of application are still in preparation for immediate implementation to the general public, then of course, in a long period, this regulation will not be changed.

Evidentiary uses of electronic certificates have been strictly governed by the Ministerial Regulation. In accordance with Indonesian procedural law, Article 5 of this regulation establishes that electronic documents and/or their printed outcomes are admissible in court as evidence. Electronic records can be retrieved from a database and used as evidence. This also explains why no normative or legal issues with existing legislation exist.

3.2 Ease of Doing Business and Investing

The development of technology and socio-economic changes in the community, according to Waskito and Hadi Pranowo, will affect the provisions in land registration (Waskito et al., 2019). The electronic land certificate service is believed to increase the Ease of Doing business (from now on, referred to as EoDB) or the ease of doing business for Indonesia to rank 40 by 2024 (Bahfein, 2021).

The use of electronic certificates has greatly aided Indonesia's efforts to speed up its land registration goal. Also, it can boost the EoDB ranking by increasing the value of the registered property (Fadli, 2021). The purpose of issuing electronic certificates is, among others, to improve business indicators and public services because many people have Micro, Small, and Medium Enterprises (MSMEs) but do not have

business capital. Therefore, through this socialization effort, it helps the government to explain related to electronic-based land services. The government will first validate the previous land certificate regarding data, land size, and others. After the validation is complete, the old or analog land certificates are replaced with electronic certificates and stored in an electronic database at their respective storage addresses. Later, the landowners can print their certificates anytime and anywhere in accordance with the units regulated in Article 16 of the Ministerial Regulation of ATR/Ka.BPN Number 1 of 2021.

The purpose of issuing land certificates electronically, namely for efficiency and transparency of land registration, and management of land records and certificates, will be more secure. The intensity of derivative services will increase in direct proportion to the increase in registered lands through PTSL, the trend of modernization, and the demands of the economic and social ecosystem. And culture towards industry 4.0. It has been proven successful in modernizing services in other government agencies and the private sector, which will increase the value of Registering property to improve the EoDB rating.

Implementing electronic certificates as the locus of EoDB for ease of business, licensing, taxation, electricity network, obtaining loans and property registration, and so on. The initial implementation is planned for government agency lands; this is also related to supporting facilities and infrastructure in electronic certification, internet networks, and adequate human resource competencies related to information and communication technology (R et al., 2020: 321-327).

3.3 Legal Protection For Land Owners

When land is registered for the first time, certificates attesting to existing rights to land parcels and ownership of condominium units are generated. Land rights and mortgages that have been documented in the appropriate land book and for which a certificate of defense of rights is available comply with the requirements of Article 19, paragraph (2) letter c of the BAL (Santoso, 2008: 290).

Until proven otherwise, the physical and juridical data contained in the certificate must be accepted as correct data, both when carrying out day-to-day legal actions and when litigating in court. This is because the certificate is a proof of rights that is valid as a powerful means of evidence regarding the physical data and juridical data following the data contained in the measuring letter and land book concerned (Harsono, 2013: 478).

Consider certificate issuing; rules and regulations safeguard the certificate holder. In such a circumstance, however, the physical and legal data on the land certificate are not guaranteed to be accurate, although they must be accepted by the court in the absence of evidence to the contrary. Article 32, paragraph 2, of Government Regulation No. 24 of 1997 provides the chance for other parties who believe they have the same object to object to the granting of a certificate: "In the event that a certificate of land has been issued legally in the name of the person or legal entity that obtained the land in good faith and actually controls it, then the other party who feels that he has the right to the land can no longer demand the exercise of that

right if within the 5 (five) years since the issuance of the certificate has submitted a written objection to the certificate holder and the Head of the relevant Land Office or has not filed a lawsuit to the court regarding the ownership of the land or the issuance of the certificate”.

In Article 32 paragraph (2) of Government Regulation Number 24 of 1997, Legal protection for land certificate holders can be realized if it meets the following elements (Santoso, 2008: 319): a) The certificate is issued lawfully in the name of an individual or legal entity. A certificate issued by the Regency/City Land Office for the purpose of land registration in the form of land rights is the definition of in the name of a person or legal entity; b) Acquired land without any malice. The principle of good faith exists to shield those who, in good faith, acquire rights from someone they reasonably believe to be the rightful owner of such rights; c) The land is controlled. Land rights are physically maintained and used by the holder of the land rights themselves or by other people or legal entities that approve the holders of the land rights (Santoso, 2010: 281) : d) No formal objection has been lodged with the certificate holder and the local Regency/Municipal Land Office Head, and no litigation has been filed with the court within 5 (five) years of the certificate's issuance, either challenging the certificate's validity or the land's tenure.

Several concerns arise as there is much attention on electronic certificates, namely the problem of the existence of old certificates, electronic certificate storage, and procedures for obtaining electronic certificates. In addition, the extent to which electronic data security guarantees terms of recognition of proof of ownership of land rights. There is an advantage to using electronic certificates because they are widely accepted and understood by all parties involved in land rights and other matters. A potential drawback is that electronic data stored in IT systems is not yet recognized by Indonesian procedural law; efforts are being made to change this, however, thanks to the National Civil Procedure Law Bill. Unfortunately, electronic data is easily altered, intercepted, misrepresented, and transmitted to far-flung locations throughout the globe.

Electronic information and/or Electronic Documents and/or their printed outputs constitute legal proof, an extension of legal evidence under the applicable procedural legislation in Indonesia, as stated in Article 5 of Law Number 11 of 2008 about Information and Electronic Transactions. For this context, "expand" must refer to the kind of evidence outlined in the ITE Law's Article 5 paragraph 1 (Sitompul, 2012: 65): a) Incorporating proof that has been approved by a body of criminal procedure law, such as Indonesia's Criminal Procedure Code (from now on referred to as KUHAP). The Criminal Procedure Code already regulates a wide variety of evidence kinds, and it now includes electronic information and/or electronic documents as Electronic Evidence Instruments; b) Indonesia's Criminal Procedure Code, for instance, may benefit from a broader definition of the types of evidence that it permits.

The Criminal Procedure Code governs the admissibility of documentary evidence, such as printed copies of information or electronic documents. Article 5

paragraph (4) of the ITE Law specifies the formal standards for electronic evidence, which are as follows: Electronic Information or Documents are not documents or letters that, according to the legislation, must be in printed form (Sitompul, 2012). The ITE Law specifies in Articles 6, 15, and 16 the essential characteristics of admissible electronic evidence, namely the availability, integrity, and validity of the information or electronic document in question (Suhariyanto, 2012: 10). Electronic land certificates, as evidence of electronic ownership 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.

Therefore, to ensure the security of electronic data in terms of acknowledging proof of ownership of land rights, namely by building a national land database and backing up data with a note that the information contained in electronic certificates and/or electronic documents is considered valid and accessible, displayed, guaranteed needs, and accounted for so that it can explain a situation. Correction of accurate land mapping and data collection throughout Indonesia should be carried out so that there is no overlapping of land ownership that results in conflict and/or land disputes.

3.4 E-Certificate as a Means of Reducing Land Disputes

Falsified land certificates, duplicate or overlapping land certificates, and the proliferation of the land mafia all contribute to the plethora of land disputes that plague the area and do irreparable harm to the local economy. The community can no longer rely on land rights certificates as a source of legal certainty. Consequently, a new legal innovation that can keep up with the increasingly complicated dynamics of society is desperately needed by the government. Because if there is a change in society, the community's legal needs also require changes and additions to both positive legal rules and legal institutions (Yusra, 2013: 63-71). Otherwise, legal stagnation will occur as the adage is known that the law will always lag behind the times (*het Recht think Achter de feiten aan*).

In line with this, on January 21, 2021, ATR/Ka.BPN plans to replace land certificates in physical form with land certificates in electronic form. One of the reasons is to minimize or suppress disputes so that forgeries are rampant. However, many questions arise in the community regarding the legal power of this electronic certificate. Agrarian Law expert, Kurnia Warman, said that electronic certificates still have the same legal force as physical certificates. The power is the same. The certificate is only said to be valid if it matches the land book, so the strength of the certificate is not in the physical appearance that is seen in the copy held by that person. But the match with the one in the land book. So whatever the form of the copy of the land book, whether copied in the electronic form called an electronic certificate or copied in physical form, it has the same legal force.

The certificate given to the rightful person serves as a means of proof regarding the types of rights, the subject, and the land. Holders of rights, their heirs, and those who receive rights from them will feel guaranteed and can easily carry out legal

actions related to land and for interested parties to obtain information that can be trusted.

3.5 Comparison With Other Countries

Over the past few decades, land registration systems all over the world have been undergoing a process of modernization as a result of the use of information and communication technology. A land modernisation registration system that is designated by the government will ensure that the public has access to online land registration and will introduce infrastructure for the process of electronic registration (Kaczoroswska, 2019).

Examples from a number of nations demonstrate that the transition to electronic land registration is inevitable as a result of advancements in information and communication technology. It is known as POLARIS (the Province of Ontario Land Registration Information System) in the Canadian province of Ontario; Land Online in New Zealand; e-conveyancing in the United Kingdom before it was developed into e-lodgments; STARS e Lodgment in Singapore (Low, 2005); the National Electronic Conveyancing System (NECS) in Australia; and the Computerized Land Registration System (CLRS) and Electronic Land Administration System in Malaysia.

Several agrarian conflicts in Indonesia still show that administrative problems in the land sector are not yet optimal and need improvements in the future to minimize the occurrence of conflicts again. The occurrence of problems in the agrarian sector can arise because the system in Indonesia still uses a negative publication registration system with a positive tendency. In this system, the government has not been able to provide legal evidence holders (certificate holders) with legal certainty because and on the certificate, all data and information in the government certificate are correct, they are not responsible, and all data will be considered correct, if no party objected or sued, with the issuance of the certificate. There are still many conflicts over land in Indonesia, especially unresolved land disputes related to land rights.

A country's land registration system is governed by the principles chosen by that country. Each nation has its own land publication system, which may differ from those of other nations. Positive and negative publication strategies are utilized in land registration. The type of registration system differs between the two publication systems. The positive publication system employs a system for registering rights, whereas the negative publication system uses a system for registering deeds. Government Regulation 24/1997 governs land registration in Indonesia, which adheres to a land registration system for negative publications and has a positive inclination. This land registration system employs a system for registering property rights, however the publication system cannot be pristine. According to the physical and legal information contained in the certificate, the authenticity of the certificate cannot be verified. However, the court must still pronounce it to be accurate data if there is no additional information from parties that object to the certificate's issuance that can indicate otherwise.

4. Conclusion

As a conclusion to the preceding discussion, it can be stated that an electronic land certificate is a certificate issued through an electronic system in the form of an electronic document. The Ministry of ATR/Ka.policy BPN's is to implement electronic land certificates to improve services in the land sector in order to offer legal clarity and protection for land owners, minimize disputes and conflicts over land ownership, and prevent the expansion of land mafia. Electronic-based land services are also a BPN innovation to improve measures of business and community service accessibility. The advantages of electronic certificates for the community include quick access to digital data and the elimination of falsification of land certificates, which are the basis for ensuring legal certainty regarding property ownership rights. Based on an evaluation of the definition of legal certainty, electronic certificates are referred to as legal certainty guarantees. First, this Ministerial Regulation is a legal regulation. Both Ministerial Regulations are founded on preamble-analyzable facts. This Ministerial Regulation is organized in accordance with the rules for drafting laws and regulations, and these three facts have been stated clearly. Given their relevance to current circumstances, it is difficult to alter these four candies. In addition, legal certainty is tied to proof; electronic certificates are valid legal evidence and an extension of legal evidence in accordance with Indonesian procedural law. The government can evaluate the policy for issuing electronic land certificates to programs that have already been implemented, namely the electronic certificate of mortgage rights, and carry out socialization to the community as a whole on the issuance of electronic certificates so as not to cause concern in the community. There must be innovation in implementing public services so that the process of providing public services becomes more efficient, effective, transparent, and accountable.

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