
APPLICATION OF ELECTRONIC LAND CERTIFICATES IN THE INDONESIAN LAND SYSTEM

Stevani Deska Suryani BR M, Jeane Neltje Saly

Universitas Tarumanegara, Indonesia

Email: stevani.217211028@stu.untar.ac.id, jeane@fh.untar.ac.id

Abstract

As the era develops, which is supported by technological developments into the digital era, everything becomes easier and more practical. Likewise in Indonesia, which has begun to follow the development of the digital era. In order to realize modernization in connection with the digital era, services in the land sector in Indonesia have also begun to apply land services based on electronics to produce legal products in the form of electronic documents. The Electronic Land Certificate itself was launched in the Regulation of the Head of the National Land Agency regarding Electronic Certificates which was signed by the Minister of Agrarian Affairs Sofyan Djalil on January 12, 2021. The purpose of this study is to provide knowledge and understanding of how to apply electronic certificates to the public. Through normative juridical methods and tracing document studies from laws and regulations to scientific journals, the research results will be used to analyze this study. The results of the study show that the application of electronic land certificates is something that cannot be prevented due to the increasingly advanced developments in today's digital era.

Keywords: Electronic, land certificate, Indonesian land law.

INTRODUCTION

Soil is one of the elements needed by humans in running life. Soil is the surface of the earth or the layer of earth that is above once (Spring, 2008). According to Article 4 paragraph 1 of the UUPA land is the surface of the earth. The development of science and technology also occurs in the land sector in Indonesia. The development of the land sector in Indonesia is marked by the implementation of electronic land registration and the results of the registration are in the form of electronic data and information and are no longer physical documents.

In addition, land is also an object whose arrangements are quite complex and various land law systems in Indonesia both in terms of acquisition, management, and dispute resolution that often arise from ownership of land rights. Provisions on land law in Indonesia, especially related to land ownership rights, are regulated through Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles or abbreviated as UUPA. The basic things regulated in the UUPA are ownership rights over land, such as property rights, business use rights, rental rights, use rights, land clearing rights and other rights stipulated in the UUPA.

Land registration in Indonesia consists of 2 (two) stages, namely land registration for the first time and maintenance of land registration data. Land registration for the first time can be carried out through 2 (two) ways, namely systematic land registration and sporadic land registration. Systematic land registration is carried out simultaneously with the initiative of the Government, namely the National Land Agency. While sporadic land registration is land registration at the request of the rights holder concerned either individually or en masse.

A land certificate is proof of one's ownership of land as stated on the certificate. The certificate is a strong handle in proving its property rights, because the certificate is issued by a valid and legally authorized agency in this case is the National Land Agency. The statement of the UUPA that certificates as a result of land registration products is the strongest evidence to show that in the event of a land dispute, this dispute must be resolved in the general court, which is a district court where a person can take legal action to fight for or assert his rights by submitting evidence that he has (Syarief, 2014).

Based on statistical data from the Ministry of Agrarian and Spatial Planning / National Land Agency (ATR / BPN) until now there have been 84,529,603 land certificates that have been registered with a total area of 30,960,765 Ha, whose distribution consists of property rights of 66,011,341 certificates, business use rights of 15,770 certificates, building use rights of 5,320,176 certificates, use rights of 800,246 certificates, management rights of 5767 certificates and waqf land of 162,338 certificates (Nafan, 2022). These data are stored at the Land Office in the form of a Land Book that explains juridical data such as certificate numbers, types of rights, names of owners, and land area as well as Measuring Letters that explain physical data on land parcels.

Along with the development of existing science and technology requires us to grow by following the development of science and technology. It is inevitable that information technology and electronic transactions are the spearhead of the era of globalization that has swept almost all corners of the world, technological advances will eventually change the structure of organizations and social relations because the development of digital technology has resulted in integration or convergence in the development of information technology, media and telecommunications (Mansur, 2005). Hasil dari perkembangan zaman dan teknologi tersebut adalah munculnya produk teknologi baru yang menggabungkan kemampuan sistem informasi dan sistem komunikasi yang terangkai dalam suatu jaringan sistem informasi yang selanjutnya disebut sistem elektronik (Febrianti, 2021).

In order to realize modernization in connection with the development of science and technology, the Ministry of ATR / BPN carried out a digital transformation of land certificates into electronic land certificates. Therefore, the Ministry of ATR / BPN issued Regulation of the Minister of ATR / BPN Number 1 of 2021 concerning Electronic Certificates. The regulation regulates the implementation of land registration which before the issuance of this regulation was carried out analogously. However, after the regulation is issued, land registration can be carried out electronically, both for the first time land registration and for data maintenance. The transformation from conventional to electronic certificates has the hope that it can reduce the number of disputes, conflicts, and court cases related to land (Febrianti, 2021). In addition, the transformation of electronic certificates also supports the culture of reducing paper in today's development and makes it easier to manage, maintain, and can be accessed anytime and anywhere (Sugianto, 2019).

According to Article 19 paragraph (2) letter C of the UUPA, a certificate is a proof of ownership of land rights, management rights, waqf land, property rights over apartment units and dependent rights, each of which has its own land book. While electronic certificates are certificates issued through electronic systems in the form of electronic documents (NASIONAL, 2018). Based on Article 1 point 2 of the Regulation of the Minister of ATR / BPN Number 1 of 2021 reads as follows:

"Electronic Document means any electronic information created, transmitted, transmitted, received, or stored in analog, digital, electromagnetic, optical, or similar form, which can be seen, displayed, and/or heard through a computer or electronic system, including but not limited to writing, sound, images, maps, designs, photographs or the like, letters, signs, numbers, access codes, symbols or perforations that have meaning or meaning understandable by a person who able to understand it".

However, this electronic certificate also raises questions related to how it is applied in society, whether the transformation from land certificates to electronic land certificates has begun to be applied in people's lives. So what about physical land certificates that will or have been transformed into electronic certificates. Whether the land certificate is still valid or the certificate will be withdrawn by the Ministry of Agrarian and Spatial Planning (ATR) of the National Land Agency. Most people think that electronic certificates are still not an urgency to be applied because there are still many problems related to land both because certificates are

forged, certificates overlap, and others. The occurrence of problems such as forgery of certificates, double certificates or overlapping is one of the causes of disputes in land that harm the community.

Based on the above background, the author is interested in researching the application of transformation and ordinary soil certificates into electronic land certificates. Thus, based on the explanation above, in the framework of writing this journal, the author tries to browse, research, and analyze more deeply about electronic land certificates by taking the research title is Application of Electronic Land Certificates in the Agricultural System in Indonesia.

This research includes normative legal research with a statutory approach, and examines related regulations such as Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE) and Regulation of the Minister of ATR / BPN Number 1 of 2021 concerning Electronic Certificates. For data collection techniques, authors use secondary data, such as books, journals or scientific writings and other research results. Then the author will present descriptively in order to produce an argument and know legal issues related to the juridical and technical aspects of electronic certificates in this study.

RESEARCH METHOD

In the data analysis method in this study, the author uses qualitative analysis methods obtained from normative aspects of material related to the topic of discussion of this study. Qualitative research method is a research model derived from social science to examine social problems and phenomena in depth with a relatively small but more focused area of researchers or population.

RESULT AND DISCUSSION

Land Law in Indonesia

Land law in Indonesia is regulated in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles. However, before the enactment of the Basic Agrarian Law / UUPA land law was regulated in Article 33 paragraph (3) of the 1945 Constitution which reads thus:

"Earth, water, and natural resources contained therein are controlled by the State and used as much as possible for the prosperity of the people (Ruslina, 2012)

The basis for the consideration of his issuance of UUPA is v

1. That in the Republic of Indonesia whose people's life structure, including the economy, is mainly agrarian, earth, water, and space as gifts of God Almighty have a very important function to build a just and prosperous society;
2. That the agrarian law in force before the UUPA was partly structured based on the aims and joints of the colonial government and partly influenced by it, thus contradicting the interests of the people and the state in completing the present national revolution and universal development;
3. That before the enactment of the UUPA agrarian law was dualism, with the enactment of the law in addition to the enactment of western law;
 - a. That for the indigenous people of Indonesia, colonial agrarian law does not guarantee legal certainty.

The definition of agrarian according to UUPA includes earth, water, and space, including the natural wealth contained therein. Expert opinions related to several definitions of Agrarian Law and Land Law are as follows:

Utrecht said that agrarian law and land law became part of the country's administrative law, which testing the special legal nexus that would allow officials in charge of agrarian matters to perform their duties (Surata, Mariadi, & Sena, 2020)

R.M, Sudikno Mertokusumo stated that agrarian law is the entire rule of law, both written and unwritten that governs agrarian affairs.

Subekti states that agrarian law is the entirety of legal provisions, both civil law, constitutional law and state administrative law that regulate the relationship between people, including legal entities, with earth, water, and space in all state territories and also regulate the authority derived from these relationships (Santoso, 2012).

Bachsar Mustofa stated that agrarian law guidelines are written in the form of laws and regulations made by the state, while unwritten legal guidelines are agrarian law in the form of customary law made by the community and live, grow and develop as well as apply and be maintained by the community concerned (Santoso, 2012)

AP. Parlindungan expresses the notion of agrarian in the sense of sempit and the broad meaning. Agrarian in the narrow sense is that agrarian manifests as land rights. While in a broad sense agrarian includes earth, water, space and natural wealth contained therein (Nurhayati, 2017)

Based on the description above related to agrarian understandings, it can be concluded that agrarian includes water, earth, and space, not just land. Boedi Harsono stated that space is also included in the agrarian scope, where the earth and water contain energy and elements that can be used to maintain and develop the fertility of the earth, water and natural wealth and other things related to it (Hutagalung & Agraria, 2010)

Application of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 1 of 2021 concerning Electronic Certificates

Land Registration in Indonesia

Land Registration based on Article 1 point (1) of PP 24 of 1997 concerning Land Registration states that:

Land registration is a series of activities carried out by the government continuously, continuously and arranged, including the collection, processing, bookkeeping and presentation and maintenance of physical data and juridical data, in the form of maps and lists, regarding land parcels and flats, including the provision of certificates as proof of their rights to land parcels that already have rights and property rights to apartment units and certain rights that burdened him.

Based on Article 3 of PP Number 24 of 1997 concerning Land Registration, the objectives of land registration are as follows:

1. to provide legal certainty and protection to holders of rights to a plot of land, units of flats and other registered rights in order to easily prove themselves as holders of the rights concerned;
2. to provide information to interested parties including the Government in order to easily obtain the data needed to bring legal actions regarding land parcels and registered apartment units;
3. for the orderly implementation of land administration.

Based on Article 19 of the Basic Agrarian Law, it regulates Land Registration as follows:

1. *to ensure legal certainty by the Government, land registration is held throughout the territory of the Republic of Indonesia in accordance with the provisions regulated by Government Regulations.*
2. *Land registration includes:*
 1. *mapping measurement and land bookkeeping;*
 2. *registration of land rights and transfer of such rights;*
 3. *provision of letters of proof of rights, which act as a strong evidentiary tool.*

4. *Land registration shall be carried out keeping in mind the state and community conditions, socio-economic traffic needs and the possibility of its implementation, according to the consideration of the Minister of Agrarian Affairs.*
5. *In the Government Regulation, the costs related to registration referred to in paragraph (1) above, provided that indigent people are exempt from paying these costs.*

Next AP. Parlindungan stated that in addition to protecting the owner of the land registration, it also serves to find out the status of the land parcel, the owner of the land plot, how large it is, the type of rights on the land parcel and what the land parcel is used for Based on the description above, it can be concluded that the purpose of land registration is to ensure legal certainty of land rights. Based on Article 19 paragraph (1) of the Basic Agrarian Law jo. Article 3 letter (a) of PP No. 24 of 1997 concerning Land Registration aims to provide legal certainty. The result of land registration is a certificate of land title as a result of the product of land registration.

There are principles in land registration based on Article 2 of PP Number 24 of 1997 concerning Land Registration, which are as follows:

a) **Asas Sederhana**

What is meant by a simple principle so that the provisions and procedures for land registration can be easily understood by the parties concerned and land rights holders.

b) **Asas Aman**

What is meant by the principle of security is that land registration is carried out carefully in order to provide guarantees in the form of legal certainty in accordance with the main purpose of land registration.

c) **Affordable Principles**

This principle is specifically for parties who are interested or have a need to be accessible to all circles. As well as providing services related to land registration that can be reached by parties who have needs.

d) **Final Basics**

What is meant by up-to-date principles is that the available data is complete and has continuity with data maintenance. The data in question can indicate an up-to-date state. This principle intends to maintain data through land registration and sustainability so that the data stored is in accordance with the conditions in the field.

e) **Open Basics**

What is meant by the open principle is that the public can know about valid data at any time.

Land Registration System in Indonesia

The Basic Agrarian Law does not clearly regulate the land registration system adopted in Indonesia. The purpose of the Basic Agrarian Law is to carry out land registration in the territory of the Unitary State of the Republic of Indonesia in order to provide results in the form of land certificates which are proof of land rights that provide legal certainty for their owners. however, referring to Article 32 paragraph (2) of PP Number 24 of 1997 concerning Land Registration regarding the existence of a time limit of 5 years for parties who object to the issuance of certificates can file objections or lawsuits.

In general, there are 3 types of land registration systems used by various countries in the world, including the following::

1. **We are Sitemen Torrens**

This system is used in several countries such as Canada, the United States, Brazil, Algeria, Spain, Denmark, Norway, and Malaysia. This system states that the certificate is the most complete and inviolable proof of land rights holders where losses suffered by the

owner will be provided through insurance funds. Changes to the land book are not allowed unless the certificate was obtained through forgery or fraud (Bachtiar, 1993).

There are several advantages in this Torrens system among others are as follows (Bachtiar, 1993):

- a. There is certainty about one's rights
- b. The description of registration is short and clear
- c. Consent is simplified so that everyone will be able to take care of their own interests
- d. Reduce fraud
- e. Ownership rights over land are enhanced in value and legal certainty
- f. Reduce unnecessary processes

2. Positive System

This system states that what is listed in the land book as a letter of proof of rights is an absolute means of proof. In other words, the evidence cannot be contested even though the name registered as the right holder is not the party entitled to the land (Arifin, 2022). The advantage of this system is that there is legal certainty for rights holders so as to encourage others to register their rights. While the shortcomings of this system can occur registration on behalf of unauthorized persons and can remove the rights of others who are entitled. The system is used in Germany and Switzerland.

3. Negative System

This system states that the certificate of title to tanah is an absolute proof. In other words, all information contained in the certificate has legal force as long as it is not proven to be reversed by other evidence. If later it turns out that the information contained in the certificate is not correct, then based on the decision of the court that has obtained permanent legal force, changes can only be made (Arba, 2021).

The mechanism of land registration in Indonesia is regulated in Government Regulation Number 24 of 1997 concerning Land Registration. After registering land, the landowner will obtain proof of land rights in the form of a land certificate issued by the National Land Agency (BPN) in the form of a book. Related to the content, method of filling, and signing of land certificates are regulated in other regulations, namely the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration.

However, along with the development of the times and technology, the Indonesian government also made adjustments to these developments. This development is characterized by the use of electronic-based systems in almost every aspect of life. This electronic-based system can be applied in Indonesia because there are regulations that regulate it, namely Law of the Republic of Indonesia Number 19 of 2016 concerning Electronic Information and Transactions.

Specifically, the land registration system mechanism has been regulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of Badan Nasional Tanah of the Republic of Indonesia Number 1 of 2021 concerning Electronic Certificates. The explanation related to electronic documents that are the result of electronic-based land registration is regulated in Article 1 point 2 of the Ministerial Regulation which states as follows:

"Electronic Document means any electronic information created, transmitted, transmitted, received, or stored in analog, digital, electromagnetic, optical, or similar form, which can be seen, displayed, and/or heard through a computer or Electronic System, including but not limited to writing, sound, images, maps, designs, photographs or the like, letters, signs, numbers, access codes, symbols or perforations that have meaning or meaning or can be understood by a person who able to understand it"

In this case, the electronic document in question is in the form of an electronic certificate which is the result of an electronic-based land registration.

The electronic document referred to in this context is in the form of data from the right holder, namely both in the form of physical data and juridical data related to their valid and authentic land parcels. The data is stored in an electronic-based data system. The electronic document is divided into two, namely electronic documents issued based on an electronic system affixed with electronic signatures and documents transferred from analog documents to electronic documents with validation carried out by authorized officials.

As stipulated in Article 12 of Government Regulation Number 1 of 2021 concerning Electronic Certificates, the application of electronic certificates will affect land parcels either to be registered or that have been registered before. Article 12 of Government Regulation Number 1 of 2021 concerning Electronic Certificates states as follows: :

(1) Land that has been determined to be land rights, management rights, property rights to flats, dependents or waqf land is registered through an Electronic System and issued an e-Certificate.

- 1. The Group of Strings stored in the Database sequentially corresponds to its edition as a history of land registration into an electronic land book.*
- 2. As a sign of proof of ownership of rights to the interests of the right holder/nazhir, given:*
 - a. E-certificates; and*
 - b. Access to e-Certificates in Electronic Systems.*

As for land parcels that have been registered, Article 15 of Government Regulation Number 1 of 2021 concerning Electronic Certificates stipulates that the replacement of analog certificates into electronic certificates is carried out if the physical data and juridical data on the land book and certificates are in accordance with physical data and juridical data in the Electronic System. And according to Article 15, what is meant by validation carried out by the authorized official in the case of documents transferred from analog documents to electronic documents includes rights holder data, physical data, and juridical data.

As the implementer of the land registration system, the Ministry of ATR/BPN has expressed its readiness to implement an electronic-based land registration system. The Ministry of ATR/BPN has simulated an electronic-based land registration system and found no obstacles to the implementation of this regulation. For people who already have analog certificates and want to convert their certificates into electronic certificates, there is no charge at all. The replacement process is carried out through several stages with the application submitted by the applicant. Similar to analog certificates, electronic certificates also provide legal certainty for the ownership of land rights for applicants.

CONCLUSION

Along with the rapid development of the times and technology, Ministerial Regulation Number 1 of 2021 concerning Electronic Certificates can be applied in Indonesia. Land registration through an electronic-based system will provide electronic document results in the form of electronic certificates both for land that will be newly registered and for land that has been registered which will be replaced from analog certificates to electronic certificates. The benefits of electronic certificates are the same as analog land certificates, which provide legal certainty for landowners. However, the advantage of electronic certificates is that it makes it easier for people to access digital data.

REFERENCES

Arba, Muhammad. (2021). *Hukum Agraria Indonesia*. Sinar Grafika.

- Arifin, Muhammad. (2022). The Four Main Principles That Become The Pillars Of Legal Building National Treaty. *De Lega Lata: Jurnal Ilmu Hukum*, 7(2), 272–279.
- Bachtiar, Effendie. (1993). *Pendaftaran Tanah Di Indonesia Dan Peraturan Pelaksanaannya*. Alumni, Bandung.
- Febrianti, Suci. (2021). Perlindungan Hukum Terhadap Pemegang Sertipikat Hak Atas Tanah Elektronik. *Indonesian Notary*, 3(3), 9.
- Hutagalung, Ari S., & Agraria, Perspektif Hukum Persoalan. (2010). *Solusi Terhadap Disharmoni Dan Disintergrasi Pengaturandisampaikan Dalam Simposium Dewan Guru Besar Universitas Indonesia: Tanah Untuk Keadilan Dan Kesejahteraan Rakyat*. Kampus Universitas Indonesia, Depok.
- Mansur, Dikdik M. Arief. (2005). *Cyber Law: Aspek Hukum Teknologi Informasi*. Tiga Serangkai.
- Nafan, Muhd. (2022). Kepastian Hukum Terhadap Penerapan Sertipikat Elektronik Sebagai Bukti Penguasaan Hak Atas Tanah Di Indonesia. *Jurnal Pendidikan Tambusai*, 6(1), 3342–3355.
- Nasional, Kantor Wilayah Badan Pertanahan. (2018). *Kementerian Agraria Dan Tata Ruang/Badan Pertanahan Nasional*.
- Nurhayati, Agustina. (2017). Hak-Hak Atas Tanah Menurut Hukum Islam Dan Undang-Undang Pokok Agraria. *Jurnal Al-Muqaranah: Jurnal Perbandingan Hukum Dan Mazhab*, 5(1).
- Ruslina, Elli. (2012). Makna Pasal 33 Undang-Undang Dasar 1945 Dalam Pembangunan Hukum Ekonomi Indonesia. *Jurnal Konstitusi*, 9(1), 49–82.
- Santoso, Urip. (2012). *Agrarian Law—A Comprehensive Study*. Jakarta: Kencana Prenadamedia.
- Spring, Joel. (2008). *Globalization Of Education: An Introduction*. Routledge.
- Sugianto, Qisthi Fauziyyah. (2019). Peluang Dan Tantangan Calon Notaris Dalam Menghadapi Perkembangan Disrupsi Era Digital. *Notarius*, 12(2), 656–668.
- Surata, I. Gede, Mariadi, Ni Ny, & Sena, I. Gede Arya Wira. (2020). The Role Of Landreform In Agrarian Law Politics In Indonesia. *Journal Of Critical Reviews*, 7(8).
- Syarief, Elza. (2014). *Pensertifikatan Tanah Bekas Hak Eigendom*. Kepustakaan Populer Gramedia.

Copyright holders:

Stevani Deska Syriac BR M (2023)

First publication right:

Injurity - Interdisciplinary Journal and Humanity



This article is licensed under a Creative Commons Attribution-ShareAlike 4.0 International