

LEGAL CERTAINTY OF ELECTRONIC LAND CERTIFICATES IN LAND REGISTRATION IN INDONESIA

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Abstract

This research aims to analyze the legal certainty of electronic land certificates in land registration in Indonesia, with a normative approach through literature studies that analyze various related laws and regulations. Electronic land certificates are expected to provide convenience and transparency in the land registration process. However, the implementation of this system faces challenges, especially related to the validity of electronic documents, the misuse of multiple certificates, and the role of notaries in the installation of mortgage rights. This study found that despite efforts to strengthen legal certainty through regulations related to electronic land registration, implementation and law enforcement issues still need to be improved. Therefore, it is necessary to strengthen regulations, increase public understanding, and stricter supervision of the implementation of electronic land registration in Indonesia.

Keywords: *legal certainty, electronic land certificates, land registration.*

INTRODUCTION

Land registration is an integral part of the land law system that aims to provide legal certainty for landowners (Purnamasari & Reykasari, 2024). In Indonesia, land registration conducted by the National Land Agency (BPN) produces certificates that serve as legal proof of ownership rights to land. Legal certainty over land rights is the main objective in Law No. 5/1960 on Basic Agrarian Principles (UUPA), which regulates land registration as an effort to provide legal guarantees to holders of land rights. Land registration aims to avoid disputes and provide certainty of rights. Although it has been regulated in Government Regulation No. 24 of 1997, however, its implementation has not been optimal because a lot of land has not been registered, which results in many people who do not have land certificates.

Land certificates have two main functions: as legal evidence of land rights (Avivah, et al., 2022) and provide a sense of security for third parties (Sumiati & Kadaryanto, 2021), such as banks, to provide loans with land collateral. In addition, certificates also facilitate the process of transferring rights, such as in buying and selling transactions. Therefore, the existence of a valid certificate is essential to ensure legal certainty in land rights.

In the face of technological developments, the government introduced electronic certificates (sertipikat-el) as part of the digital transformation in the land registration system. E-certificates, which are regulated in ATR/BPN Ministerial Regulation No. 1 of 2021, can be issued for unregistered land or as a replacement for analog certificates. The main advantages of electronic certificates are greater data security through electronic signatures and QR codes, ease of access through the "Touch My Land" application, and efficiency in the registration process and management of land records.

Although it provides various conveniences, the implementation of electronic certificates also faces challenges, mainly related to data security and technological infrastructure. However, with technological advances, it is expected that these challenges can be overcome. Overall, electronic certificates can increase transparency, reduce illegal practices, and speed up the land administration process, thus providing better legal certainty for the community. Nevertheless, the legal certainty regarding the use of electronic certificates as proof of ownership still requires further study.

The purpose of this study is to examine and analyze the legal certainty provided by electronic land certificates (e-titles) in Indonesia's land registration system. The research aims to understand the extent to which the issuance of electronic certificates can provide legal security for land rights holders, and to identify the challenges and benefits associated with the implementation of electronic certificates in Indonesia's land system. It also aims to assess the role of electronic certificates in increasing transparency, efficiency and reducing the potential for land disputes in the community.

The hypothesis of this study is that the implementation of electronic land certificates can provide stronger legal certainty than analog certificates, by strengthening the protection of land rights owners and minimizing the potential for land disputes. In addition, the implementation of electronic certificates is expected to increase efficiency and transparency in the land registration process, although it faces challenges related to data security and technological infrastructure that need to be overcome for the system to run optimally.

This research is expected to make a significant contribution to the development of the land system in Indonesia, particularly in understanding the legal implications of implementing electronic certificates. The findings of this research can be used by policymakers to evaluate and refine regulations related to electronic land registration, as well as providing a deeper understanding of the potential and challenges of implementing electronic certificates in the context of legality and land administration in Indonesia. It will also enrich the legal and land literature with new perspectives on the digitization of land certificates.

The conceptual framework of this research is based on two main concepts, namely legal certainty and information technology. Legal certainty in the context of land registration refers to efforts to provide legal security over land ownership rights, which can be achieved through a transparent and efficient registration system. Land certificates, both analog and electronic, serve as valid evidence in this regard. On the other hand, information technology, especially electronic certificates, provides a solution to the administrative challenges inherent in the conventional land registration system. By combining these two concepts, this study aims to explore how the implementation of electronic certificates can increase legal certainty, reduce land disputes, and improve efficiency and transparency in the management of land administration in Indonesia.

LITERATURE REVIEW

Land registration is a fundamental element in the Indonesian land law system that aims to provide legal certainty for land rights. As stipulated in Article 1 Paragraph (1) of

Government Regulation No. 24/1997, land registration includes a series of continuous, ongoing, and regular activities, which include collecting, processing, bookkeeping, presenting, and maintaining physical data and juridical data regarding land parcels and apartment units. This land registration process has a strategic role in creating legal certainty for the community, especially in protecting their rights to the land they own.

Harsono (2020) further explains that the term "a series of activities" refers to a series of interrelated steps that take place continuously. This land registration process, according to him, aims to produce the necessary data in order to ensure legal certainty in the land sector for the people. In this case, "continuously" indicates that land registration is a process that does not end, but is carried out continuously to ensure the updating of relevant data. Meanwhile, "regular" emphasizes that all activities related to land registration must be based on the prevailing laws and regulations, as the end result will be legally valid evidence.

Land registration itself includes several important activities that must be carried out carefully, including: first, measurement and mapping that serves to determine the location, area and boundaries of the land clearly and accurately; second, registration of land rights, which includes recording the rights attached to the land as well as the transfer of rights that may occur from time to time; third, the provision of Proof of Rights in the form of land certificates as valid and strong evidence of land ownership. Thus, through this series of activities, land registration provides legitimacy to land ownership rights and ensures that land data is systematically recorded.

The implementation of land registration is also based on several principles that serve as guidelines for the process to run well and effectively. These principles include: first, the principle of simplicity, which emphasizes that the registration process must be easily understood and accessible by the public; second, the principle of security, which provides security guarantees for land rights; third, the principle of affordability, which ensures that registration fees can be afforded by all levels of society; fourth, the principle of being up-to-date, which demands that recorded data is always updated in accordance with developments; and fifth, the principle of openness, which allows access to information about land registration by the public. With these principles, it is expected that the land registration process is not only an administrative tool, but can also provide real benefits in the protection of land rights.

In Indonesia, there are two different land registration systems: the Registration of Deeds system and the Registration of Title system. Under the registration of deeds system, the registered deed only registers the transfer of rights, but does not guarantee absolute ownership of land rights. In contrast, under the rights registration system, which applies in Indonesia, land rights registration provides legal certainty that the registered rights are valid until proven otherwise, providing stronger legal protection for land rights holders.

Overall, land registration is an important instrument in Indonesia's agrarian law system that aims to provide legal certainty over land rights. Through various technical activities carried out regularly and continuously, and based on clear principles, land registration plays a role in creating a transparent and fair land system. With an in-depth understanding of the theory and practice of land registration, the public is expected to better

understand their rights to land and the processes required to secure those rights. Over time, land registration in Indonesia is expected to run more efficiently, transparently, and with guaranteed legality, providing benefits to all relevant parties, and realizing better legal certainty in the land sector.

METHOD

This research uses a normative approach with a literature study that analyzes various laws and regulations related to land registration and the issuance of electronic certificates. The sources used include laws, government regulations, and legal literature related to the topic. The legal materials collected were analyzed using a qualitative approach to understand the legal implications of issuing electronic land certificates.

RESULT AND DISCUSSION

Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that the earth, water and natural resources contained therein shall be controlled by the state and utilized for the greatest prosperity of the people. This formulation not only provides theoretical guidelines regarding the state's authority in regulating the economy, but also serves as a strong basis for natural resource management, which includes economic aspects and land management as one of the main components. Thus, the state is responsible for ensuring that land management and utilization are carried out in the interests of the people. In this context, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (BPN) has embarked on an important step in the modernization of land services that aims to solve various growing problems.

Since 2019, the Ministry of Agrarian Affairs and Spatial Planning/BPN initiated the Modernization of Land Services Program (MPP), which consists of five stages. The first stage, which began in 2019, is known as the "Transformation Era". In the following year, 2020, electronic-based services were launched, known as "Electronic Services". Then, in the period 2021 to 2022, the "Fully Digital" stage was reached, followed by the "Information Age" stage in 2023-2024, and finally expected to reach the "World Standard Institution" in 2025. This MPP seeks to bring more efficient and effective land services, in accordance with the rapid development of technology.

One of the important steps in the MPP is the implementation of Electronic Certificates, as outlined in the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 1 of 2021 on Electronic Certificates (hereinafter referred to as the Electronic Certificate Regulation). With the issuance of this regulation, it is expected to increase the effectiveness and efficiency of land services, both in terms of time and cost. In addition, Electronic Certificates provide a higher guarantee of legal certainty compared to analog certificates, because they are accompanied by more guaranteed physical and juridical data accuracy. Electronic Certificates are also part of the real steps in realizing the third stage of the Grand Design of Land Service Modernization, which focuses on full digitization, including changing the form of land rights to electronic,

simplifying the process of validating the transfer of rights, and implementing a "One Stop Service" service system.

In the Ministerial Regulation, Article 4 paragraph (3) states that documents issued through the Electronic System, or transferred into electronic form, will be valid legal evidence. This shows a profound transformation in the way land data is managed, from physical documents to electronic-based. The implementation of Electronic Certificates is not only based on the need to modernize the land registration system, but is also an effort to create a more transparent, secure and efficient land system. This transformation, as part of the implementation of Law Number 11 of 2020 on Job Creation The implementation of Electronic Certificates is an important step to support the ease of doing business and ensure legal certainty in the land sector.

However, the implementation of Electronic Certificates is also inseparable from challenges, especially related to system trials, data integrity, and the security of the information contained therein. As stipulated in Article 3 paragraph (3) of the Regulation on Electronic Certificates, all data and information related to land certificates will be stored in the electronic system database. For this reason, more intensive efforts in ensuring data security and protection systems are key to maintaining public trust and ensuring that land rights registered in electronic form are maintained.

Since the enactment of Government Regulation No. 24/1997 on Land Registration, an electronic land registration system has been planned and prepared. Article 35 paragraphs (5) to (7) of the regulation stipulates that gradually, land registration data will be stored and presented using electronic devices and microfilm, which can then be used as valid legal evidence after being signed and stamped by the Head of the Land Office. This shows that the effort to shift the land registration system to the digital realm is not new, but rather a continuation of existing policies.

As a follow-up to these changes, Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 7 of 2019 on the Second Amendment to Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 3 of 1997 on Provisions for the Implementation of Government Regulation Number 24 of 1997 on Land Registration regulates the storage of land books in electronic format, which allows data printing through an electronic system. Through this regulation, the process of simplification in land management is increasingly felt, especially in terms of issuing electronic certificates. With the advancement and development of technology, the application of Electronic Certificates in the registration of mortgage rights, as stipulated in the Minister of Agrarian and Spatial Planning Regulation Number 5 of 2020, has a significant impact in accelerating and simplifying the land administration process.

The application of this Electronic Certificate also simplifies the procedure for registering Mortgage Rights, which can now be done electronically without requiring the submission of physical documents to the Land Office. This change not only facilitates access and speeds up the process, but also provides convenience for people who need land services to meet their business needs. This policy is supported by the Regulation of the Minister of

Agrarian Affairs and Spatial Planning Number 9 of 2019 which was later replaced by the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 5 of 2020 concerning Electronically Integrated Mortgage Services which further emphasizes the direction of digital transformation in the land sector.

Along with the rapid development of technology, electronic land registration-including the issuance of Electronic Certificates-is an indispensable solution to improve efficiency in the land administration process. In this context, the application of the Jan Michiel Otto principle in the study of land registration law can provide a more holistic view. From the point of view of legal certainty, the application of Electronic Certificates requires clear rules that are accepted by all parties, and are able to overcome potential disputes that can arise, both related to land status and ownership of rights. This legal certainty is important to create a fair and transparent system, and prevent abuse or errors in recording and granting land rights.

In addition, the usability aspect in Jan Michiel Otto's philosophy requires people to adjust their behavior to existing rules (Hendri & Markoni, 2023), including in terms of the use of Electronic Certificates. This includes efforts to reduce the risk of document forgery and facilitate a safer, more transparent and efficient land transaction process. Thus, the implementation of Electronic Certificates not only supports legal certainty, but also fulfills the practical needs of communities in accessing and managing their land data in a more modern way.

However, as emphasized by Jan Michiel Otto, in the application of legal rules such as this, there is a need to consider substantive justice, namely that the law should not only regulate rigidly, but should also pay attention to the social context and practical needs of the community (Suarni, et al. 2024). Legal certainty over land rights is very important for every land right holder, and the establishment of the *rechtsverwerking* institution in Government Regulation No. 24 of 1997 aims to achieve such legal certainty by setting a time limit for legal challenges to land certificates (Irfan et al., 2018). Land registration plays a very important role in providing legal protection for land rights holders, where land certificates serve as strong evidence of rights ownership (Arly et al., 2021). These land certificates are not only valid legal evidence, but also provide protection to the rights of landowners. However, there are a number of challenges that can threaten the legal protection of land rights holders, such as the emergence of multiple certificates and land mafia practices (Ramadhani, 2021).

The importance of implementing land registration in Indonesia cannot be underestimated, especially for landowners who have not registered for the first time (Sibuea, 2016). In this case, the application of the precautionary principle in land registration regulations is crucial to ensure the correct implementation of the land registration process and in accordance with applicable regulations (Bross, 2020). This precautionary principle serves as a basis that ensures that every step in land registration is carried out carefully to prevent disputes or legal uncertainty in the future.

Furthermore, the existence of electronic land certificates in the notarial asset-based land registration system has a legal position that is no less important in providing legal protection for the community (Widyastuti, 2021). In this context, it is necessary to have an in-depth understanding of the applicable positive law, especially in relation to the role of notaries in the process of installing mortgages on land, which are often used as debt collateral (Pakpahan *et al.*, 2022). The application of electronic land certificates as valid evidence requires not only an understanding of the land registration system, but also touches on aspects of legal recognition and acceptance of electronic documents as a form of valid evidence in legal transactions.

Furthermore, the future of land ownership regulation in Indonesia and the reconstruction of customary land registration regulations based on dignified justice are important areas that need attention in order to ensure legal certainty in the land registration process (Yubaidi, 2020; Wahyuni *et al.*, 2023). This justice-based approach and recognition of customary rights is expected to provide a stronger foundation for the protection of land rights, as well as create a land registration system that is more inclusive and acceptable to all levels of society.

Overall, the legal certainty of electronic land certificates in land registration in Indonesia is a complex issue that requires attention to various aspects of the land registration process, legal protection for land rights holders, and the role of electronic certificates in providing legal certainty for land owners. Efforts to overcome various problems related to electronic land certificates, such as their use as debt collateral, require an in-depth study of the applicable positive law, as well as the role of legal actors such as notaries in ensuring the smoothness and validity of the legal procedures involved.

CLOSING

Conclusion

The legal certainty of electronic land certificates in land registration in Indonesia still faces a number of challenges, although it is expected to provide convenience, efficiency, and transparency. Problems related to the validity of duplicate certificates, the potential for data misuse, and the role of notaries in the installation of mortgage rights indicate that the implementation of the electronic land certificate system has not fully provided the desired legal certainty. Therefore, it is necessary to strengthen regulations, improve registration mechanisms, and tighten supervision so that electronic land certificates can function legally and effectively as evidence of ownership that can be accounted for before the law.

Suggestion and Recommendation

To increase the legal certainty of electronic land certificates, it is recommended that the government strengthen the regulations governing electronic land registration, especially in terms of data validity and protection. More intensive socialization to the public and stakeholders such as notaries is also needed so that they can fully understand the procedures and mechanisms of this system. In addition, increased supervision and periodic evaluation of the implementation of electronic land registration is essential to ensure that the system

runs effectively, reduces potential disputes, and increases public confidence in the electronic land registration system.

REFERENCES

- Arly, I., & Afrilia, R. S. (2021). Legal Protection for Land Right Holders in the Event of Multiple Certificates. *Budapest International Research and Critics Institute-Journal (BIRCI-Journal)*, 4(4), 7724-7734.
- Avivah, L. N., Sutaryono, S., & Andari, D. W. T. (2022). Pentingnya pendaftaran tanah untuk pertama kali dalam rangka perlindungan hukum kepemilikan sertifikat tanah. *Tunas Agraria*, 5(3), 197-210.
- Bross, I. (2020). Prudential Principles in Regulation of Land Registration in Indonesia. *International Journal of Social Science Research and Review*, 3(3), 19-25.
- Harsono, B. (2020). Menuju penyempurnaan hukum tanah nasional: perkembangan pemikiran & hasilnya sampai menjelang kelahiran UUPA tanggal 24 September 2007. *BUKU DOSEN-2013*.
- Hendri, H., & Markoni, M. (2023). Analisis Yuridis Mengenai Pembatalan Merek “Zhe Nung Zhu”. *Jurnal Impresi Indonesia*, 2(8), 780-789.
- Irfan, M., & Kurniati, N. (2018). Kepastian Hukum Hak atas Tanah dan Eksistensi Lembaga Rechtsverwerking dalam Perspektif Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah. *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan*, 1(2), 163-174.
- Pakpahan, K. (2022). Problems Of Implementation Of Electronic Land Certificate Arrangements As Debt Guarantee. *Prophetic Law Review*, 4(1), 70-91.
- Peraturan Menteri Agraria dan Tata Ruang/ Kepala Badan Pertanahan Nasional Republik Indonesia Nomor 7 Tahun 2019 tentang Perubahan Kedua Atas Peraturan Menteri Negara Agraria/ Kepala Badan Pertanahan Nasional Nomor 3 Tahun 1997 Tentang Ketentuan Pelaksanaan Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah
- Peraturan Menteri Agraria dan Tata Ruang/ Kepala Badan Pertanahan Nasional Republik Indonesia Nomor 5 Tahun 2020 tentang Pelayanan Hak Tanggungan Terintegrasi Secara Elektronik.
- Peraturan Menteri Agraria dan Tata Ruang/Kepala Badan Pertanahan Nasional (ATR/BPN) Nomor 1 Tahun 2021 tentang Sertipikat Elektronik.
- Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah.
- Purnamasari, A., & Reykasari, Y. (2024). Perlindungan Hukum Bagi Pemegang Hak Atas Tanah Terhadap Pemberlakuan Asas Rechtsverwerking Ditinjau Dari Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah: Studi Kasus Perum. Perhutani Dengan Masyarakat Desa Garahan, Kabupaten Jember. *Kultura: Jurnal Ilmu Hukum, Sosial, dan Humaniora*, 2(10), 56-65.
- Ramadhani, R. (2021). Legal Protection For Land Rights Holders Who Are Victims Of The Land Mafia. *International Journal Reglement & Society (IJRS)*, 2(2), 87-95.

- Sibuea, H. Y. P. (2016). Arti penting pendaftaran tanah untuk pertama kali. *Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan*, 2(2), 287-306.
- Suarni, S., Antoni, H., Asmarani, N., Wahyuni, S., & Amalia, M. (2024). *Buku Referensi Hukum Pidana: Teori komprehensif*. PT. Sonpedia Publishing Indonesia.
- Sumiati, H., & Kadaryanto, B. (2021). Kepastian Hukum Sertifikat Hak Milik Atas Tanah Dalam Hukum Pertanahan Indonesia. *YUSTISIA MERDEKA: Jurnal Ilmiah Hukum*, 7(2), 135-145.
- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945
- Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja
- Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-pokok Agraria.
- Wahyuni, S., Prasetyo, T., & Ma'ruf, U. (2023). Legal Reconstruction of Indigenous Land Registration Regulations Based on Dignified Justice. *Scholars International Journal of Law, Crime and Justice*, 6, 101-7.
- Widyastuti, R. (2021). Community legal protection and the legal position of electronic land certificate in land registration based on notarial assets. *International Journal of Multicultural and Multireligious Understanding*, 8(5), 207-211.
- Yubaidi, R. S. (2020). The future of land ownership regulation in Indonesia. *International Journal of Multicultural and Multireligious Understanding*, 6(6), 712-720.

