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## Legal Regulation On The Implementation Of Electronic Certificates

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### **Abstract**

*Land as an economically valuable asset will increase in the future is a strategic option. Based on this, it can be said that land is a very important need for society. To utilize a land or plot of land, a person or community must first have authority over the land or what is known as the right of control over land. With the ownership of the land rights, a person or community can have a basis of authority and obligation and prohibition to do something on the land they own. Based on the background described above, the author is interested in researching the legal arrangements for the implementation of electronic certificates. This study uses theories and possibly hypotheses. This study aims to find a rule of law, legal principles, and legal doctrines to answer legal issues faced. From the results of the study it is known that the provisions of land based on legislation in Indonesia, which is regulated in Law No. 5 of 1960 on basic agrarian principles, which regulates the basics and provisions of the control, ownership, use and utilization of National Agrarian resources in Indonesia, it includes the basics and basic provisions, the rights to the homeland and space as well as land registration. The legal regulation on the implementation of electronic certificates refers to ATR/BPN Ministerial Regulation Number 1 of 2021 concerning electronic certificates. The mechanism for issuing electronic certificates is in accordance with agrarian and Spatial Planning Regulation Number 1 of 2021 concerning electronic certificates in Article 4 paragraph (4) electronic documents issued through electronic systems are authorized using electronic signatures in accordance with statutory provisions and validated by authorized officials or appointed officials and given digital stamps through electronic systems.*

**Keywords:** *Legal Regulation, Law Enforcement, Electronic Certificate;*

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## INTRODUCTION

Humans, both as individuals and as social beings in carrying out life, certainly need a place to be used as a foundation in carrying out their activities in the form of land. Land can be functioned not only as a land to build a place to live, but also can be used as a place to grow crops, build an area for industrial purposes, bury someone who has died, and so forth. Land as an economically valuable asset will increase in the future is a strategic option. Based on this, it can be said that land is a very important need for society. To utilize a land or plot of land, a person or community must first have authority over the land or what is known as the right of control over land. With the ownership of the land rights, a person or community can have a basis of authority and obligation and prohibition to do something on the land they own. (Boedi Harsono, 2011).

Land rights are rights that come from the state and are given either directly or indirectly whose control can be personal or joint. Land is a state asset that is very much at all, one source of state income is also largely sourced from taxes in the field of land, both building taxes and other taxes such as rent, rights of Use, and so forth. (Ali Ahmad C., 2011) related to certificates as a means of proving rights, there are various certificates based on the object of land registration in Government Regulation No. 40 of 1996 and Government Regulation No. 24 of 1997 on land registration, namely:

- a. Certificate Of Ownership;
- b. Sertipikat Hak Guna Usaha;
- c. Certificate Of Building Rights On State Land;
- d. Certificate Of Building Rights On Land Management Rights;
- e. Certificate Of Right To Use State Land;
- f. Certificate Of Land Use Rights Management Rights;
- g. Land Management Rights Certificate;
- h. Waqf Land Certificate;
- i. Certificate Of Ownership Of The Apartment Unit;
- j. Certificate Of Property Rights For Non-Apartment Units;
- k. Certificate Of Liability

Evidence still plays an important role in a judicial process, especially disputes on land. During the evidentiary stage in land dispute cases, the parties are given the opportunity to demonstrate the truth of the legal facts that are the focal point of the dispute. (Urip Santoso, 2012) parties who are able to show valid and convincing evidence, tend to reap victory. Land certificate that is still in physical form (paper) is still leaving a problem that must be solved immediately. (Ahmad Yani and Rezky Amalia Syafiin, 2021) the digital Era is an era where everything that supports life is made easier with technology to make it more practical and modern. The development into the digital age can no longer be prevented. In the field of land in order to realize the modernization of Land Services began to implement electronic-based Land Services, to the documents produced in the form of electronic documents. Based on the background described above, the author is interested in researching the legal arrangements for the implementation of electronic certificates.

## **RESEARCH METHODS**

This research is a descriptive study that aims to describe something in a certain area and at a certain time. Usually in this study, researchers have obtained or have a picture in the form of initial data about the problem to be studied. In descriptive research a researcher has often used theories and possibly hypotheses. (Suratman and Philips Dillah, 2015) this study aims to find a rule of law, legal principles, and legal doctrines to answer legal issues faced. (Peter Mahmud Marzuki, 2010) the method of data collection is carried out by means of library research (library research) or also called library studies which include primary, secondary and tertiary legal materials. (Suratman and Philips Dillah, 2015) after the data collected both primary and secondary then re-analyzed using qualitative analysis methods. How to analyze the data in this study by collecting materials sourced from legal materials based on concepts, theories, laws, doctrines, legal principles, expert opinions or the views of researchers themselves, relating to the validity of electronic certificates as evidence of ownership of land rights.

## RESULTS AND DISCUSSION

### **Urgency To The Implementation Of Electronic Certificates In Indonesia**

The application of information technology, besides intended to integrate and relationalize between land registration and land registration, also to minimize human intervention, so that the value of validity and reliability of land information data presented remains high (reliable), both vital statistics and land statistics. The implementation of public services is an effort by the state to meet the basic needs and civil rights of every citizen for goods, services, and administrative services provided by public service providers. (April, 2014) Electronic signatures are legally regulated by the government to issue several official regulations. The function of this electronic signature serves as a tool to verify and authenticate the identity of the signing while ensuring the integrity and authenticity of the document. E-signature makan shows the identity of the signer which is verified based on the e-signature creation data where the e-signature creator data is uniquely created which only refers to the signing. (Agustina Bidarti, 2020)

In addition, the advantages of electronic signatures compared to manual signatures can make a document invalid because of changes in the document both the writing and the signature method and the document will be more secure from modification by unauthorized parties. This can facilitate the process of proof rather than a manual signature that requires detailed examination in a forensic laboratory to prove its authenticity. (Yuridis.id, 2018) regarding the validity or legal force and legal consequences, this electronic signature is equated with a manual signature so that the document has legal force. (Law No. 11 of 2008 on information and transactions Article 11 Jo. Civil Code, Article 1869 jo. article 1874)

Thus, the electronic signature contained in an electronic document can be categorized as an authentic act and its validity is recognized by the state as long as it meets the requirements that have been determined. The nature of the law that is always open and dynamic to follow the dynamics of changing needs of society is expected to answer the need for legal certainty legal certainty regarding the issue of law *sicherheit durch das recht* which ensures a particular act is a crime and *sicherheit des recht selbst* namely certainty about the law itself. Related to this, if it is associated with current conditions, modern times accompanied by the rapid development of Science, Technology and information, a legal product is essentially expected to produce a legislation both in terms of substance to its application that can guarantee legal certainty.

One of the legal products that is expected to be able to keep pace with these developments, in this case in the field of land is the regulation of the Minister of Agrarian and Spatial Planning/head of the National Land Agency of the Republic of Indonesia Number 1 of 2021 concerning electronic certificates. The way to find out the Ministerial Regulation is a guarantee of legal certainty is to study it in accordance with the meaning of legal certainty itself. There are four things related to the meaning of legal certainty, the first is that the law is positive or in the form of legislation (*gesetzliches recht*). Both of these laws are based on facts (*tatsachen*), not a formulation of the judgment that will be made by the judge. The three facts must be formulated in a clear way so as to avoid errors in meaning and easy to apply. The four positive laws cannot be changed often. Regulation of the Minister of Agrarian and Spatial Planning/head of the National Land Agency of the Republic of Indonesia Number 1 of 2021 concerning electronic certificates is clearly a positive law which since it was established on January 12, 2021 has been classified in the hierarchy of legislation in Indonesia as regulated in Law Number 12 of 2011 concerning the establishment of legislation.

Related to the regulation of the Minister of Agrarian and Spatial Planning/head of the National Land Agency of the Republic of Indonesia Number 1 of 2021 concerning electronic certificates which at the application level is still at the preparation stage to be immediately applied to the general public, of course, in a long time this regulation will not be changed. -El certificate if it meets the standards as stipulated in the regulation of the Minister of Agrarian and Spatial Planning/head of the National Land Agency of the Republic of Indonesia regulates electronic systems, electronic documents, data, databases and electronic signatures.(Regulation of the Minister of Agrarian and Spatial Planning / head of BPN RI No. 1 Of 2021, Article 1 Number 1-5).

The situation described in the activities of land registration through the electronic system is presented in the form of documents in the form of survey images, images of space, maps of land, petaruang, measurement letters, Floor Plans, space measurement letters, and certificates in the form of electronic documents. So it can be understood that this Ministerial Regulation has fulfilled the formal and material requirements of electronic documents so that they can be used as evidence. Basically, the Ministerial Regulation mentioned above has specifically regulated the use of e-certificates as evidence. Article 5 of this regulation states that electronic documents and / or their printouts are valid legal evidence and an extension of valid evidence in accordance with the applicable procedural law in Indonesia, where for evidentiary purposes, electronic documents can be accessed through an electronic system. (Regulation of the Minister of Agrarian and Spatial Planning / head of BPN RI No. 1 of 2021, Article 5) this also explains that this ministerial regulation does not conflict with norms or conflict with other laws and regulations.

#### **Legal rules for the implementation and application of electronic certificates as evidence of ownership of land rights**

The concept of accelerating land administration can also be achieved through the construction of a legal framework that favors administrative interests rather than legal ones. The complicated concept of land ownership and control is a significant obstacle affecting the process of land administration reform, so that legal considerations can be temporarily ruled out. The legal framework of the tenure system must be able to adopt the concept of social tenure where in Indonesia there are areas with diverse customary land tenure systems, and it certainly takes a short time to be able to build governance granting/recognition of rights for each customary land tenure system. Similarly, the existence of state land is currently increasingly complex, with the possession / ownership of land that is treated as an asset of each government organization.

In fact, the implementation of the land registration system, which is the basis of the procedure for obtaining a guarantee of certainty of land rights, has differences in terms of systems in various countries. In countries that adhere to the common law legal system, especially those in the jurisdiction of the Commonwealth of Nations or the British Commonwealth countries in terms of land registration system knows two fundamental classifications, namely the torrens title system (torrens system) and the English system which is a modified version of the torrens system. The torrens system is the most complete evidence of land rights holders and cannot be contested, unless the acquisition of land certificates by forgery. In addition there is a positive publication system and negative publication system, positive publication system is applied in countries such as Germany and Switzerland, where the land certificate is valid as proof of absolute land rights and is the only proof of land rights. While the negative publication system is applied in continental European countries such as the Netherlands which is then applied also in Indonesia, Malaysia and Singapore.

The negative publication system is then not immediately applied in Indonesia regarding the 5-year time limit for parties who object to the issuance of land rights certificates to file objections or lawsuits. This rule is in line with the institution of *rechtsverwerking* (*daluarsa*) known in customary law which is the basis of land law in Indonesia, that the abandoned land, then the land is worked by others who obtained it in good faith, then the person concerned will lose his right to reclaim the land. So based on these regulations, the publication system applied in Indonesia is a negative publication system with a positive tendency. (UUPA Article 32 Paragraph 2 Jo. and PP No. 24 of 1997) the result of land registration based on this government regulation in the form of a certificate which is proof of the right to land rights, management rights, Waqf land, property rights to flats and mortgage units, each of which has been recorded in the relevant land book. (UUPA Article 19) regarding the form, content, method of filling and signing the certificate, then the implementation and output of the process produces a measurement letter and certificate in written form where for each land right, management right, property right to flats, mortgage, and Waqf land, a land book is made (regulation of the Minister of Agrarian Affairs/Head of BPN No. 3 Year 1997 Article 140-192)

Along with the rapid development of the times in the current era of globalization which is characterized by the development of Science, Technology and information, of course, various aspects of the field of government need to make adjustments. Where there is a public scope Electronic System Operator which is a State Administration agency or institution appointed by the State Administration Agency. So in this case, the implementation of the state based on the electronic system can be applied to various aspects of the field of government, including in the field of land, even specifically can be applied to the mechanism of land registration system along with the exterior. (Act No. 19 year 2016 jo. PP No. 71 of 2019 Article 1 Number 4 and 5) any electronic information created, forwarded, 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 people who are able to understand them. In this case, the electronic document in question is in the form of an electronic certificate or an e-certificate. (Regulation of the Minister of Agrarian Affairs / Head of BPN No. 1 Of 2021 Article 1 Number 2).

Data, electronic information and / or electronic documents are data of rights holders, physical data and juridical data of valid land plots and maintained their authenticity stored in electronic system databases. As for the implementation starts from data collection, data processing and data presentation. The results or outputs obtained are divided into two, namely electronic documents issued through electronic systems with authentication using electronic signatures and documents that are transferred from media to electronic documents validated by authorized officials or appointed officials and given digital stamps through electronic systems. The implementation of this rule will then have a direct effect on the plots of land that will and that have been registered. That the land that has been assigned the right to become land rights, management rights, property rights to flats, mortgage or waqf land is registered through an electronic system and issued an e-certificate. Then as proof of ownership of the rights to the rights holder / *nazhir*, given the certificate-el and access to the electronic system *sertipikatel*. (Regulation of the Minister of Agrarian Affairs / Head of BPN No. 1 Year 2021 Article 12)

Electronic evidence in question is in the form of Electronic Information and electronic documents, electronic evidence can be said to be valid if using a system regulated in the law, such as can be guaranteed its integrity, correctness, authenticity and can be accounted for its appearance which can also be accessed so as to explain a situation. The existence of electronic

evidence is recognized as valid evidence in the Procedural Law in force in Indonesia. (Law No. 19 of 2016 article 5 paragraph 1.2) this electronic land certificate does not remove the function of conventional land certificates which can also be a valid legal evidence of land ownership. Both electronic and conventional certificates have the same position. (PP No. 18 Of 2021 Article 84).

## CONCLUSION

Land provisions based on laws and regulations in Indonesia are regulated in Law No. 5 of 1960 on basic agrarian principles, namely regulating the basics and provisions of the control, ownership, use and utilization of National Agrarian resources in Indonesia, this includes the basics and basic provisions, rights to the homeland and space and land registration. The legal regulation on the implementation of electronic certificates refers to ATR/BPN Ministerial Regulation Number 1 of 2021 concerning electronic certificates. The mechanism for issuing electronic certificates is in accordance with agrarian and Spatial Planning Regulation Number 1 of 2021 concerning electronic certificates in Article 4 paragraph (4) electronic documents issued through electronic systems are authorized using electronic signatures in accordance with statutory provisions and validated by authorized officials or appointed officials and given digital stamps through electronic systems.

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