



Electronic Land Certificate Versus Analog Land Certificate in Proof of Ownership Certainty

Liliana Tediosaputro^(✉) and Retno Mawarini Sukarningsih

17 Agustus 1945 Semarang University, Semarang, Indonesia
lilianatedjo@gmail.com

Abstract. Regulation of the Ministry of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 1 of 2021 concerning Electronic Certificates to replace analog certificates. Various interpretations of electronic certificates which have characteristics that are not in the form of analog/paper but in the form of digital documents. The formulation of the problem, whether electronic land certificates provide proof of land ownership certainty? The research method used is normative juridical by looking at various statutory provisions. The theory used is the theory of legal certainty, legal protection. Public doubts about guarantees of legal certainty in the event of a dispute, document falsification despite the regulation of Law Number 11 of 2008 in conjunction Law Number 19 of 2016 concerning Information and Electronic Transactions, that electronic information and/or electronic documents and/or their printouts are valid evidence. The transformation of technological progress changes the land registration system from a paper/analog based process to an electronic based service. Land title certificate is a certificate of proof of land ownership rights in the form of a copy of the land book and measuring document which has been put together and given a cover while Electronic certificate or e-certificate is a certificate issued through an electronic system in the form of an electronic document. Electronic documents are valid legal evidence and an extension of legal evidence so that electronic documents are equivalent to documents made on paper. The difference between electronic and analog certificates is that land e-certificates use Hashcode, QR code, single identity, electronic signature, electronic document, while analog certificates are the opposite and are still conventional in paper form. Transitioning to electronic certificates, the Land Agency needs to improve on Big Data Land Management in an integrated manner and conduct intensive socialization to the community. Electronic certificates are expected to be able to resolve land conflicts and create legal certainty.

Keywords: Analog certificates · Electronic certificates · Land ownership · Legal certainty

1 Introduction

Law and legal consciousness have a close bond or Technological developments are so fast that digital transformation is needed for quality services and realizing legal certainty.

© The Author(s) 2023

A. Endah Kusumaningrum et al. (Eds.): ICLEH 2022, ASSEHR 723, pp. 150–157, 2023.

https://doi.org/10.2991/978-2-38476-024-4_18

Article 19 paragraph (1) of the Basic Agrarian Law states that land registration is carried out for land parcels throughout the territory of the Republic of Indonesia which aims to guarantee legal certainty.

The total area of Indonesia is 8.23 million km² with a land area of 191,944,000 ha and a water area of 632,000,000 ha. Total plots of land are 126,000,000 Plots. The benefits of land registration are for legal certainty, minimizing land disputes, supporting development, increasing the ease of doing business index, encouraging financial inclusion, forming an orderly administration, increasing State Tax Revenue, building a Large-Scale One Map Policy.

Land Registration is a series of activities carried out by the Government continuously, on an ongoing basis and regularly covering the collection, processing, bookkeeping, and presentation and maintenance of physical data and juridical data, in the form of maps and lists, regarding plots of land, above ground, basement and apartment units, including the issuance of a certificate proof of rights for plots of land, above ground, basement that already has rights and ownership rights to the Flat Unit as well as certain rights that encumber it.

Types of Land Ownership in Indonesia include State Land, Former Customary Land, Ex-Western Rights Land, Swatantra Land, Ulayat Land and Other Lands. The lands are then registered as Land Rights in the form of Ownership Rights, Business Utilization Rights, Building Use Rights, Use Rights, Management Rights, Wakaf, while for Ulayat Land, it is enough to register or be given Management Rights. The registration of these lands is given proof of rights as strong evidence in the form of certificates.

The problem from this paper is whether electronic land certificates can provide convenience for land rights holders in accessing land data in proving certainty of land ownership?

2 Research Method

The research method used is the normative juridical method, which examines the application of the rules or norms in positive law. The legal writing method is carried out by examining library materials or secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials by looking at various statutory provisions. The theory used is the theory of legal certainty, the theory of legal protection.

3 Findings and Discussion

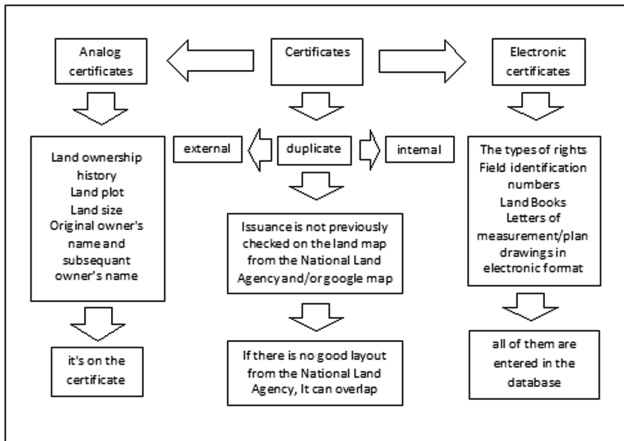
Certificate is proof of rights as referred to in Article 19 paragraph (2) letter c of the Basic Agrarian Law for land rights, management rights, wakaf land, ownership rights to flat units and mortgage rights, each of which has been recorded in the related land book. Electronic certificates, hereinafter referred to as e-certificates, are certificates issued through the electronic system in the form of electronic documents.

The legal basis for the implementation of electronic certificates according to Law Number 11 of 2008 concerning Information and Electronic Transactions states that the operation of the electronic system is protected and recognized by law. Electronic

Information, Electronic Documents and/or their printed results are valid legal evidence and are an extension of legal evidence in accordance with Indonesian Procedural Law.

The Ministry of Agrarian and Spatial Planning/National Land Agency has launched a digital transformation policy, one of which is electronic certificates. The policy is stated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No.1 of 2021 concerning Electronic Certificates. Electronic certificates are part of electronic services that have been issued previously, namely electronic mortgages, certificate checking, land value zones, and land registration description letter.

According to the Regulation of the Ministry of Agrarian and Spatial Planning/Head of the National Land Agency No. 1 of 2021 concerning Electronic Certificates, the implementation of land registration can be carried out electronically and includes land registration for the first time and maintenance of land registration data. Land registration is carried out through the Electronic System and the implementation of electronic land registration is carried out in stages as determined by the Minister. The results of the implementation of the Electronic System in the form of Electronic Documents are in the form of electronic documents issued through the electronic system and/or documents which are transferred to different media such as electronic documents.



Land title certificate is a certificate of proof of land ownership rights in the form of a copy of the land book and measuring document which has been put together and given a cover. That analog certificate contains land ownership history, land plot, land size, original owner’s name and subsequent owner’s name as stated in the land title certificate. The problem with analog certificates, they can be duplicated which trigger internal and external land conflicts because the issuance is not further checked on the land map and/or google map. Overlaps will definitely still happen as long as there is no good layout from the National Land Agency.

The Electronic Certificate contains the types of rights, Field identification numbers, Land Books, Letters of measurement/plan drawings in electronic format and all of them are entered in the database. Therefore, Electronic Certificates are expected to be effective

in the management of National Land which can minimize the duplication of certificates, counterfeiting and illegal land transactions by the land mafia. Electronic Certificates also avoid the risk of loss, destroyed by fire, destroyed by rain and theft of physical documents.

The main difference between analog certificates and electronic certificates is the physical nature, types of information and methods of securing it. Physically, the differences are; Analog certificates are given to rights holders in the form of a book, while electronic certificates are given in electronic form/file. For type of information, the main addition to the electronic certificate is information about Restrictions and Responsibilities. For the security method, electronic certificates use Hash Code, QR Code and Electronic Signature. These things are added values that will provide many advantages for the electronic Certificate holder. In the context of land services, electronic certificate holders receive certain land services without having to come to the land office.

The type of rights in the electronic certificate will depend on the land rights to be granted. The Land Sector Identification Number (NIB) on the electronic certificate is a Single ID which is the reference for all existing land registration activities. The Unique Code/hashcode on the electronic certificate is issuance of the electronic document, which is followed with the issuance edition of the Electronic Document Edition. The QR Code on the electronic certificate is an encrypted data id of the electronic certificate used to access information directly through the system provided by the Ministry. Electronic signature on the electronic certificate accompanied by the stamp of the Land Office.

In some other countries, such as Malaysia and some parts of Australia, they use Secure Paper even though they have saved Electronic Documents. Several countries that have implemented electronic land services will improve rapidly. Therefore, in Indonesia, an electronic application is implemented because it will increase the value of Registering Property.

According to the Consortium for Agrarian Reform, the important things to note regarding Electronic Certificates are that they are not yet needed and have not been prioritized because systematic land registration in all parts of Indonesia has not been carried out. The first step should be to register all land in Indonesia, both forest area and non-forest area so that a complete land database will be summarized for the basis of national development planning and implementation of agrarian reform, especially land reform. The implementation of this digitalization will start from government land and business entities land.

Certificates are withdrawn, then validated, and stored in an electronic file system. The electronic certificate can be printed anywhere by the owner when needed. The digitalization process is considered vulnerable because many land certificates by business entities are areas of structural agrarian conflict with the surrounding community. This process has the potential to aggravate agrarian conflicts, reinforce inequality and land monopolies by private and state enterprises. Conflict should be resolved first. The original certificate has the right to be kept by the people and this right must not be removed.

This digitization is considered to violate higher regulations, namely Government Regulation Number 24 of 1997 concerning Land Registration, Government Regulation Number 40 of 1996 regarding Business Use Rights, Building Use Rights, and Use Rights as well as Law Number 5 of 1960 concerning Agrarian Principles. The digital system

managed by the Ministry of Agrarian and Spatial Planning/National Land Agency is considered not safe and without bureaucratic reform, it is very vulnerable to abuse and even to be hijacked. The digitalization system from the user perspective is considered difficult for the poor because of the difficulty in accessing such technology system. The digitization program is increasingly oriented towards the interests of liberalizing the land market in Indonesia. The existence of land certification without being preceded by land reform and agrarian reform will only legitimize land monopoly by large-scale business entities and facilitate sale and purchase on land transactions for capital owners.

The Agrarian Conflict will never end according to Maria S.W. Sumardjono including unresolved Land Conflicts, Structural Conflicts, Evictions of community lands (New Order) and unfinished land registration throughout the territory of the Republic of Indonesia. According to the Deputy Minister of Agrarian and Spatial Planning/National Land Agency, efforts to resolve agrarian conflicts require a strategy to overcome inequality in land ownership/control through Agrarian Reform with strong leadership, cross-sectoral coordination and communication and understanding the needs of the community.

ratified using an electronic signature, has ISO security standards, uses encryption technology such as cryptography by the National Cyber and Password Agency (BSSN), is easy to maintain and manage, can be accessed without time and space limitations, minimize the risk of loss, burn and theft [2].

The provisions of Article 32 paragraph (2) of Government Regulation Number 24 of 1997 states that in the event that a land parcel has been issued legally with certificate in the name of the person or legal entity that acquires the land in good faith and actually controls it, the other party who feels that he has the land right can no longer demand the implementation of the right if within 5 (five) years from the issuance of the certificate, they have not submitted a written objection to the certificate holder and the relevant Head of the Land Office or have not filed a lawsuit with the court regarding land tenure or that certificate issuance.

The things that can be proven in the land title certificate are the type of land right, the right holder, physical information about the land object, the burden on the land and events related to the land [3].

The application of electronic land certificates is feared to be a double-edged knife. Issues with digital security, readiness of state apparatus, other assigned officials (in this case PPAT) and community readiness for land certificate transformation are feared to create shock and concern over land administration services. Thus, it is necessary to study the system properly by the government to realize the idea of digitizing the national land administration [4].

Electronic certificates are the latest concept of the land registration process. The purpose of electronic certificates is to eliminate the use of analog data that requires unlimited space, is prone to loss and falsification. With electronic certificates, digital data stored in a land database is evidence that will replace certificates in the form of paper documents. The implementation of the electronic certificate is very possible with the availability of digital technology that is growing from time to time. For this reason, the implementation of electronic certificates requires quality digital data support. Without valid and reliable

data, the implementation of electronic certificates will encounter obstacles in the form of land disputes caused by untrusted data because they are inaccurate [5].

In the provisions of Article 6 of the Information and Transaction Electronic Law, an electronic document is considered valid if it can be accessed, displayed, guaranteed for its integrity, and can be accounted for so that it can explain a situation.

This change also affects the public's perspective on the use of documents that were originally paper-based which was then transferred to different media from analog form into electronic document form. One of the objectives of the implementation of this media transfer is in the context of efficient use of paper, or often known as paper less. In addition, with the use of electronic documents, in terms of making, processing and storing electronic information, it will be more efficient in terms of cost and time. However, the transfer of media from analog land certificates to land certificates in the form of digital documents still requires further regulation [6].

The Information and Electronic Transaction Law and Government Regulation Number 7 of 2019 concerning the Implementation and System of Electronic Transaction, provide the same meaning, namely an electronic certificate containing an electronic signature and an identity indicating the legal subject status of the parties in an electronic transaction issued by the provider of electronic certification.

The existence of electronic certificates is expected to be able to provide convenience for holders of land rights, such as access to land data, proof of ownership certainty and types of rights as well as minimizing counterfeiting [7].

Article 147 of the Job Creation Law Number 11 of 2020 states that what can be in electronic form is proof of Land Rights, Ownership Rights to Flat Units, Management Rights, Mortgage Rights, Deed of Transfer of Land Rights, and other documents related to land.

Government Regulation No. 18 of 2021 in Article 85 explains that for the purposes of proof in court and/or provision of land information requested, data and/or documents can be granted access through an electronic system.

Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Information and Electronic Transaction states that electronic documents are equivalent to documents made on paper.

The Supreme Court recognizes electronic documents in the court system through the Supreme Court Circular (SEMA) No. 14/2010 concerning electronic documents as a complete application for cassation and review. This SEMA is intended to make the process of 'minuting' case files more efficient and effective, as well as creating transparency and accountability of services. The SEMA only regulates electronic documents in the form of decisions and indictments that are included on compact discs, flash disks can be sent via email as a complete application for cassation and review. The SEMA does not give directions that electronic documents are evidence. Furthermore, the SEMA was updated with SEMA 1 of 2014 concerning Amendments to SEMA 14 of 2010 concerning Electronic Documents as a complete application for Cassation and Review. The process of proof in criminal and civil cases is an important element. Therefore, recognition of the position/existence of electronic evidence in ensuring legal protection and certainty is important between parties [8]. Revising the PP on Land Registration is a necessity that aims to synchronize and harmonize regulations regarding e-certificates. This physical

data change is carried out by replacing the analog certificate into an e-certificate into an electronic document, then the analog certificate is withdrawn to be combined with the land book and stored as a warkah and media transfer/scan are stored in the Database [9].

The Agrarian Reform Consortium emphasized the community's right to keep the original land certificate and this right should not be removed. Electronic land certificates should serve as a complement and aim to facilitate the land database at the Ministry of Agrarian Spatial Planning/National Land Agency. The issuance of the Regulation of the Ministry of Agrarian Spatial Planning/National Land Agency Number 1 of 2021 is also considered to violate higher regulations.

According to the Secretary General of the Consortium for Agrarian Reform (KPA), Dewi Kartika, assessing electronic certificates without registration of people's land have the potential to pose an issue.

4 Conclusion

Land title certificate is a letter of proof of land ownership rights in the form of a copy of the land book and measuring document which has been put together and given a cover.

Electronic certificates are certificates issued through electronic systems in the form of electronic documents. Electronic documents are valid legal evidence and an extension of legal evidence so that electronic documents are equivalent to documents made on paper.

Transitioning to electronic certificates, the Land Agency needs to improve on Big Data Land Management in an integrated manner and to carry out socialization to the community intensively.

Analog certificates and electronic certificates are expected to be able to resolve land conflicts to create legal certainty. Analog land certificates actually do not need to be abolished and the right of the community to keep the analog certificates and electronic certificates as a complement to facilitate the land database towards legal certainty because historical land data information are in the land book and analog certificates.

References

1. Alimuddin, Nur Hidayani, 'Implementasi Sertifikat Elektronik Sebagai Jaminan Kepastian Hukum Kepemilikan Hak Atas Tanah Di Indonesia', SASI, 27.3 (2021), 335. <https://doi.org/10.47268/sasi.v27i3.509>
2. DA, Ady Thea, '6 Kritik KPA Untuk Kebijakan Sertifikat Tanah Elektronik', Hukum Online.Com, 2021 <<https://www.hukumonline.com/berita/a/6-kritik-kpa-untuk-kebijakan-sertifikat-tanah-elektronik-lt601d3bfeb8060?page=all>> [accessed 10 August 2022]
3. Destriana, Arsyilla, and Tiurma Mangihut Pitta Allagan, 'Peran Pejabat Pembuat Akta Tanah Dalam Administrasi Pertanahan Melalui Sertifikat Tanah Elektronik', PALAR (Pakuan Law Review), 08.01 (2022), 91–106
4. Febrianti, Suci, 'Perlindungan Hukum Terhadap Pemegang Sertifikat Hak Atas Tanah Elektronik', Indonesian Notary, 3.3 (2011), 197–219
5. Khasanah, Dian Dewi, 'Analisis Yuridis Kekuatan Hukum Sertifikat Tanah Elektronik Dalam Pembuktian Hukum Acara Perdata', Widya Bhumi, 1.1 (2021), 13–24. <https://doi.org/10.31292/wb.v1i1.5>

6. Mujiburohman, Dian Aries, 'Transformasi Dari Kertas Ke Elektronik: Telaah Yuridis Dan Teknis Sertifikat Tanah Elektronik', *BHUMI: Jurnal Agraria Dan Pertanahan*, 7.1 (2021), 57–67. <https://doi.org/10.31292/bhumi.v7i1.472>
7. Rehas, Abdul Mukmin, 'Sertifikat Sebagai Alat Bukti Sempurna Kepemilikan Hak Atas Tanah Ditinjau Dari Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah', *Yuriska : Jurnal Ilmiah Hukum*, 1 (2017), 77–88. <https://doi.org/10.24903/yrs.v1i1.203>
8. Sapardiyono, and Sukmo Pinuji, 'Konsistensi Perlindungan Hukum Kepemilikan Dan Hak Atas Tanah Melalui Sertifikat Tanah Elektronik', *Widya Bhumi*, 2.1 (2022), 54–64
9. Suhattanto, Muh Arif, Sarjita Sarjita, Sukayadi Sukayadi, and Dian Aries Mujiburohman, 'Kualitas Data Pertanahan Menuju Pelayanan Sertifikat Tanah Elektronik', *Widya Bhumi*, 1.2 (2021), 100–114. <https://doi.org/10.31292/wb.v1i2.11>
10. Suyus Windayana (2022), *Transformasi Digital Menuju Layanan Pertanahan Berkualitas Untuk Mewujudkan Kepastian Hukum*
11. Government Regulation Number 24 of 1997 concerning Land Registration
12. Government Regulation Number 7 of 2019 concerning the Implementation and System of Electronic Transactions
13. Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration
14. Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles
15. Law Number 11 of 2008 concerning Information and Electronic Transactions
16. Law Number 19 of 2016 concerning Information and Electronic Transactions
17. Law Number 1 of 2021 concerning Electronic Certificates

Open Access This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

