

JURIDICAL ANALYSIS OF LEGAL POWER OF ELECTRONIC LAND CERTIFICATE BASED ON PERMEN ATR/ BPN NO. 1 YEAR 2021

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ABSTRACT

Land certificates are documents of proof of land ownership rights as the final product of the land registration process. The purpose of the study is to provide knowledge and understanding of the legal power of electronic land certificates and provide knowledge and understanding of the position of electronic land certificates in land registration law in Indonesia. research method using normative juridical. Electronic certificates are included in authentic deeds even if they are in electronic form. Electronic certificate contains Electronic signature. In the rule of law in Indonesia, there has never been a definition of the word signature, which actually has two basic functions as a sign of the identity of the signing and the sign of approval of the signing of the obligations attached to the deed. Electronic land certificates have a position as strong evidence in land registration law in Indonesia, land registration procedures to obtain electronic certificates must refer to the Minister of ATR/BPN Regulation Number 1 of 2021 concerning Electronic Certificates.

Keywords: Government, Land Registration, Electronic Certificate.

INTRODUCTION

God, as the creator of nature, created land as one of the natural resources bestowed by him. As a source of livelihood and livelihood, land is the most basic need for human life, even humans and land cannot be separated from humans from birth to death. On land, humans carry out activities and reproduce, so that every human being must be related to the land. Apart from being inseparable, land also has economic, social, political and cultural functions in the life of human society. The relationship between humans and land is very essential. The nature of the relationship is always evolving according to cultural developments, especially by social, political and economic influences. Therefore, this land problem needs to be arranged and planned carefully and wisely. On the other hand, for the state and development, land is also the basic capital for the implementation of state life in the framework of the integrity of the Unitary State of the Republic of Indonesia (NKRI) and to realize the greatest prosperity of the people. Because of this position, the control, ownership, use and use of land is guaranteed legal protection from the government (Aminuddin Salle et al, 2010).

Land is a very central thing, apart from being a means of production it is used as a place of residence. The importance of land is very important, in Indonesia there are still many of our people who have not obtained land, there are still many land claims registered in court. The aspect of land tenure is a major part of agrarian politics, in which land determines the social structure of society (Enny Agustina, 2021). Land is the main capital in building a just and prosperous society. Therefore, in a country, it is necessary to rely on regulations regarding land ownership and utilization of land potentials that lead to aspects of justice and objectively view that land is also the main capital towards the development of an industrialized country.

Then, what is meant by objective use of land is strategic planning for land use and the potential contained therein in supporting the growth of community productivity and the development of industrialization as the main capital to build a country that is independent, sovereign and has personality so that it becomes a nation with dignity. Land as a source of life is very influential in building the life of the nation and state (Muhammad Fachri Herazwa, 2021).

Indonesia is a constitutional state that strongly adheres to legal values and norms such as certainty, justice and legal benefits in order to achieve the welfare of society and the state, in this case it is stated in the provisions of the 1945 Constitution of the Republic of Indonesia, namely article 33 paragraph (3) which reads : "Earth, water and the wealth contained therein are controlled by the state and used as much as possible for the prosperity of the people" (Arif Rahman Hakim, 2021). This article denotes a welfare state with the ratification and enactment of regulations related to land as stipulated in Law Number 5 of 1960 concerning Basic Agrarian Regulations or commonly referred to as UUPA which lays out the most important parts to guarantee regarding the form of land ownership which aims to achieve progress in the field of land administration nationally.

In UUPA, the principle of the state's right to control over land is regulated and reduced to various types of land rights granted to individuals and legal entities. The state grants several types of rights to land to individuals or legal entities with the intention that the right holder manages the land according to these rights as long as they do not conflict with the boundaries set by the state. Rights holders are also burdened with the obligation to register land rights in order to support legal certainty. The UUPA and its implementing regulations provide an embodiment of legal certainty guarantees for land rights throughout Indonesia. Registration of land rights is an important means of building and realizing legal certainty and realignment of land use, control and ownership. (Elza Syarif, 2014).

In order to maintain the security and legal certainty of land rights, every person who obtains and has rights should endeavor to obtain a certificate of land rights. In this way, the owner of the land title certificate will feel more secure and at ease in exercising his right. Administrative order in the field of defense is part of an effort to obtain the form of the principle of certainty, especially legal certainty. The rules have placed the task and also the authority on the Government by collecting data and registering land in Indonesia and for the community of right holders to be able to register the land they control based on the applicable provisions, namely the UUPA.

The Government of the Republic of Indonesia through the Ministry of Agrarian Spatial Planning/National Defense Agency plans to enact and implement electronic certificates as proof of ownership of land rights. This electronic certificate is guided by the Regulation of the Minister of Agrarian Spatial Planning / Head of the National Defense Agency Number 1 of 2021 concerning Electronic Certificates. The regulation states that the issuance of electronic land certificates is carried out through land registration for the first time, for land that has not been registered or replaces previously registered land certificates from analog to digital form. Land registration is a series of activities carried out by the government continuously, continuously on a regular basis, including collection, processing, bookkeeping and presentation and maintenance of physical data and juridical data in the form of maps and registration of land parcels and apartment units including the issuance of letters and evidence for land parcels that already have rights and ownership rights to apartment units as well as certain encumbering rights. The meaning of land registration is contained in Article 1 paragraph (1) PP No. 24 of 1997 Jo PP Number 18 of 2021 Concerning Management Rights, Land Rights, Flats Units and Land Registration.

This land registration is carried out by the government to provide guarantees of legal certainty for the people in the land sector. Collection of physical data in the field can be carried out by a third party, but the final result must be ratified by an official who is declared by the government to have the authority to do so. The results of the physical data collection need to be authorized by the authorized official because it aims to be used as evidence. (Boedi Harsono, 2002)

The main agrarian law never mentions land certificates, but as found in Article 19 paragraph 2 letter c there is a mention of "certificate of rights". In everyday terms, this certificate of title is often interpreted as a land certificate. In another sense, if in the future there is a dispute or problem with the land parcel, the certificate of title or land certificate can function to encourage an orderly, peaceful legal atmosphere and can encourage the creation of a conducive atmosphere. (Lubis MHD Yamin and Abd Rahim Lubis, 2008).

A land certificate is a document proving ownership rights to land as the final product of the land registration process. The land registration institution itself in Indonesia only existed in 1960 when the enactment of Government Regulation No. 10 of 1961 governing land registration. This institution was born because of an order from the UUPA, that one of the objectives of the issuance of Law No. 5 of 1960 concerning the UUPA was to provide guarantees of legal certainty for the land rights of the Indonesian people. In accordance with Article 19 of the UUPA it is explained that there are obligations that must be carried out by the government as the highest agency to carry out hold registration in order to guarantee legal certainty to landowners in terms of location, boundaries, and land area, land status.

Land registration in Indonesia has the aim of providing legal certainty guarantees (rechts kadasters) of land rights and legal protection of land ownership (Leonardo Refialy, et al, 2015). Because, by registering land, the owner of the land parcel will get a document proof of rights as proof of ownership of the data whose legal certainty is guaranteed. Documents proof of these rights which PP 10 of 1961 and PP No. 24 of 1997 Jo. PP No. 18 of 2021 is called a land certificate.

Land certificates are given strong evidentiary power by UUPA (Article 19 paragraph (2) letter c, meaning that this certificate has not absolute but strong proving power, that as long as the physical data and juridical data are in accordance with the Land Book and Measurement Letter it is considered as correct data, unless it can be proven otherwise in Court. The implication in Indonesia is that land certificates can still be changed if there are legal and/or administrative defects in the issuance. This choice was taken in order to provide legal protection for people who acquire/own land in good faith (Article 32 PP No. 24 of 1997 Jo PP Number 18 of 2021 Concerning Management Rights, Land Rights, Flats Units and Land Registration). (Fakhriah Efa Laela, 2013).

The digital era is an era where all activities that support life are facilitated by technology to make it more practical and modern (Shinta Dewi, 2009). The development towards the digital era cannot be prevented anymore. In the field of Land Affairs, in order to realize the modernization of land services, it starts with implementing electronic-based land services, up to the resulting documents in the form of electronic documents. (Arba HM, 2015). The launch of the electronic land certificate policy starts in 2021 with the issuance of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 1 of 2021 concerning Electronic Certificates, which was signed by the Minister of Agrarian Affairs Sofyan Djalil on January 12, 2021.

Based on the background explanation above, the problem in this research is how the legal force of electronic land certificates is based on the regulation of the minister of agrarian and spatial planning/head of the national land agency number 1 of 2021 concerning electronic land certificates and what is the position of electronic land certificates in land registration law in Indonesia.

RESEARCH METHOD

The research method used is a normative juridical approach and an empirical approach. Data collection procedures consist of library research (Library Research) and field studies (Field Research). While data processing is done by editing, systematization, and data classification methods. After the data is collected, it is then analyzed using qualitative analysis to draw conclusions (Ishaq, 2017)

RESULTS AND DISCUSSION

Land rights are rights over a certain portion of the earth's surface, which is bounded, has two dimensions in length and width. The use and utilization of land granted to and owned by the rights provided for and by the UUPA, will not have any meaning and or meaning if it is limited to only the surface of the earth. Because humans also need from a part of the body of the earth's surface below it and water and space that is above it to the surface. So the characteristic of land rights is that someone who has land rights has the authority to use or take advantage of the land that is his right. The types of land rights include:

- a. Right of ownership
- b. Cultivation Rights
- c. usufructuary rights
- d. Lease Rights
- e. Right to Open Land
- f. Right to Collect Forest Products

The process of granting rights to an application for land rights does not merely look at the procedural aspects and must also be studied from a legal perspective. The guarantee of legal certainty and legal protection for owners/holders of land rights according to national land law is regulated in several articles in the BAL, including the following:

1. Article 19 paragraph (2) letter c.
The registration referred to in paragraph (1) of this article includes the issuance of letters of proof of rights, which serve as strong evidence.
2. Article 23 paragraph (2)
The registration referred to in paragraph (1) is a strong means of proof regarding the annihilation of ownership rights and the validity of the transfer and encumbrance of said rights.
3. Article 32 paragraph (2)
The registration referred to in paragraph (1) is a strong means of proof regarding the transfer and abolition of the usufructuary right, except in cases where the said right is annulled because the term expires.
4. Article 38 paragraph (2)
The registration referred to in paragraph (1) is a strong means of proof regarding the annulment of the building use right and the validity of the transfer of said right, except in the event that said right is annulled due to the expiry of the term.

This will produce letters of proof of rights or what are referred to as land certificates that are valid as a strong means of proof as explained in Article 1 number 20 of Government Regulation Number 24 of 1997 concerning Land Registration that certificates are letters of proof of rights as referred to in Article 19 paragraph (2) letter c of the UUPA for land rights, management rights, waqf land, ownership rights to apartment units and mortgage rights, each of which has been recorded in the land book concerned (Christiana Sri Murni, 2018).

The Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) plans to replace land certificates in physical form with land certificates in electronic form. One of the reasons is to minimize or suppress disputes to counterfeiting which has been rife. However, there are many questions that arise in society regarding the legal force of this electronic certificate. Agrarian law expert, Kurnia Warman, said electronic certificates still have the same legal force as physical certificates. The strength is the same. The certificate is only said to be valid if it matches the land book, so the strength of the certificate is not based on the physical appearance of the copy held by that person. but the match is with that in the land book.

The certificate is a copy of the land book and measurement letter after they have been bound together with a cover paper, the shape of which is determined by the Minister. A certificate of land rights proves that a person or a legal entity has a right over a certain plot of land. As for obtaining a certificate as proof of ownership of land, it must go through a series of processes called land registration. Land registration includes collecting, processing, bookkeeping, and presenting and maintaining physical data and juridical data in the form of maps and lists of land parcels and apartment units, including the issuance of certificates of proof of title as existing land parcels. their rights and ownership rights to flats and certain rights that burden them (Ilyas Ismail, 2011) The purpose of issuing land certificates electronically is aimed at efficiency and transparency of land registration; management of land records and records will be more secure; the intensity of derivative services will increase, in direct proportion to the increase in the number of land registered through PTSL; modernization trends and demands for economic, social and cultural ecosystems towards industry; has proven successful in other government agencies and the private sector in service modernization; will increase the value of Registering Property in order to improve Indonesia's Ease of Doing Business rating; will reduce the community's obligation to come to the land office by up to 80%; public perception that land services are managed traditionally; natural disasters such as floods, landslides and earthquakes.

In Article 1 point 8 Ministerial Regulation ATR/Ka BPN Number 1 of 2021 defines an electronic certificate as "a certificate issued through an electronic system in the form of an electronic document". So that the results of land registration activities are published in the form of electronic documents. Furthermore, the meaning of electronic documents is stated in Article 1 number 2, namely: "Electronic Documents are any electronic information that is created, forwarded, sent, received, or stored in analog, digital, electromagnetic, optical, or the like, which can be seen, displayed, and / or heard through a computer or electronic system, including but not limited to writing, sound, pictures, maps, plans, photos or the like, letters, signs, numbers, access codes.

The position of ATR/BPN Ministerial Regulation Number 1 of 2021 concerning Electronic Certificates is one type of legislation, Ministerial Regulations are recognized and have binding legal force with two conditions, namely "ordered by higher Legislation or formed based on authority" . referring to the basic considerations (considerations) of Ministerial Regulations referring to the UUPA and its implementing regulations as well as laws and regulations related to the ITE Law and the Job Creation Law. So it can be said that the Ministerial Regulation regarding e-certificates was formed on the basis of a higher regulatory order, which shows the basic authority of ministers as assistants to the President who have certain powers in government. The Ministry of ATR/BPN is in charge of government affairs in the field of land and spatial planning. Therefore, it can be formulated that the Ministry of ATR/BPN has attributive authority, namely authority that has been determined or follows the provisions as stated in the preamble and remembers in the Regulation of the e-certificate.

Regarding the power of electronic certificates, a similar explanation is also explained in Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE) in article 5 paragraph (2) is valid proof of ownership based on legal procedural provisions in Indonesia. So based on statutory regulations, electronic certificates are included in authentic deeds even in electronic form. Electronic certificates contain Electronic signatures. The rule of law in Indonesia has never provided a definition for the word signature which actually has two basic functions as a sign of the identity of the signatory and a sign of approval from the signing of the obligations attached to the deed.

CONCLUSION

Based on the results of the research and discussion that has been carried out, the authors can draw conclusions that the legal force of electronic certificates refers to the legal source of Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE), Law Number 11 of 2020 concerning Job Creation, and ATR/BPN Ministerial Regulation Number 1 of 2021 concerning Electronic Certificates. because it only regulates electronic certificates. On the other hand, the main source of law in land registration is the Basic Agrarian Law and its Implementing Regulations. refers to the basis for consideration (consideration) of Ministerial Regulation ATR/BPN Number 1 of 2021 concerning Electronic Certificates which refers to Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) and its implementing regulations. Electronic land certificates have legal standing as evidence issued by the government in the framework of implementing land registration according to the provisions of laws and regulations. Electronic land title certificates are in principle the same as conventional land title certificates which aim to prove that a person or a legal entity has a right over a particular land parcel. in land registration law in Indonesia. The strength of proof attached to electronic certificate evidence is Law Number 11 of 2008 concerning Information and Electronic Transactions which states that electronic documents are equivalent to documents made on paper.

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