THE URGENCY OF ELECTRONIC LAND CERTIFICATES IN THE LAND REGISTRATION LEGAL SYSTEM IN INDONESIA

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ABSTRACT

Objective: This study focuses on the implementation of Electronic Land Certificates in Indonesia's land registration system and their significance in ensuring legal certainty, reducing disputes, and modernizing land administration processes.

Theoretical framework: The research is grounded in the context of digital advancements and the adoption of electronic-based land services to modernize land administration. It explores the advantages and disadvantages of electronic land certificates and compares Indonesia's progress with other countries.

Method: A normative juridical approach was used to gather data from relevant documents and legislation related to electronic land certificates. The study’s data were processed to derive its conclusions.

Results and conclusions: Electronic Land Certificates are introduced to enhance land ownership security, streamline administrative procedures, and reduce fraudulent activities. The digitalization of land services aligns with broader objectives of improving public services and ease of doing business. While the implementation is gradual and pilot projects are being conducted, the transition to electronic certificates is expected to provide convenience and legal certainty for landowners.

Originality/Value: The study highlights the importance of embracing electronic land certificates and the potential benefits they bring to land administration. It also emphasizes the need for public awareness and education to facilitate a smooth transition to digitalized processes.

Research implications: The findings of this research have the potential to inform policymakers, authorities, and the general public about the advantages and considerations of adopting electronic land certificates in Indonesia's land registration system. The study contributes to discussions on modernizing administrative procedures and ensuring legal clarity in land ownership.

Keywords: electronic land certificates, land registration, legal certainty, modernization, land ownership.
A URGENÇA DOS CERTIFICADOS TERRENOS ELETRÔNICOS NO SISTEMA JURÍDICO DE REGISTRO DE TERRAS NA INDONÉSIA

RESUMO

Objective: Este estudo centra-se na implementação de Certificados Terrestres Eletrónicos no sistema de registo predial da Indonésia e na sua importância para garantir a segurança jurídica, reduzir disputas e modernizar os processos de administração fundiária.

Enquadramento teórico: A investigação baseia-se no contexto dos avanços digitais e da adoção de serviços fundiários electrónicos para modernizar a administração fundiária. Explora as vantagens e desvantagens dos certificados de terras electrónicos e compara o progresso da Indonésia com outros países.

Método: Foi utilizada uma abordagem jurídica normativa para recolher dados de documentos relevantes e legislação relacionada com certificados prediais electrónicos. Os dados do estudo foram processados para tirar suas conclusões.

Resultados e conclusões: Os certificados eletrónicos de terras são introduzidos para aumentar a segurança da propriedade da terra, agilizar os procedimentos administrativos e reduzir as atividades fraudulentas. A digitalização dos serviços terrestres está alinhada com objectivos mais amplos de melhoria dos serviços públicos e facilidade de fazer negócios. Embora a implementação seja gradual e estejam a ser realizados projetos-piloto, espera-se que a transição para certificados electrónicos proporcione comodidade e segurança jurídica aos proprietários de terras.

Originalidade/Valor: O estudo destaca a importância de adotar certificados fundiários electrónicos e os benefícios potenciais que eles trazem para a administração fundiária. Enfatiza também a necessidade de sensibilização e educação do público para facilitar uma transição suave para processos digitalizados.

Implicações da investigação: Os resultados desta investigação têm o potencial de informar os decisores políticos, as autoridades e o público em geral sobre as vantagens e considerações da adoção de certificados eletrónicos no sistema de registo de terras da Indonésia. O estudo contribui para as discussões sobre a modernização dos procedimentos administrativos e a garantia da clareza jurídica na propriedade da terra.

Palavras-chave: certidões prediais electrónicas, registo predial, segurança jurídica, modernização, propriedade fundiária.

1 INTRODUCTION

The conclusive result of the land registration procedure is a document commonly referred to as a land certificate, which serves as evidence of ownership rights to a specific plot of land. In the context of Indonesia, land registration was initially addressed under Government Regulation No. 10 of 1961 (Aditya et al., 2021). The establishment of the UUPA (Undang-Undang Pokok Agraria) or BAL (Basic Agrarian Law) (Law No. 5 of 1960 concerning Basic Agrarian Regulations) was aimed at safeguarding land rights and providing assurance to the Indonesian people in the event of legal disputes. Ensuring legal clarity is mandated by Article 19 of the BAL, necessitating land registration across the
nation (Rejekiningsih et al., 2019).

Nonetheless, despite the existence of over 126 million land parcels, only around 82 million of them have been officially recorded as of 2021. According to Suyus Windayana, the Director General for Determination of Rights and Land Registration, the current registration rate stands at 35% (PHPT). To address this issue, the government has set the objective of fully mapping all land parcels through the Complete Systematic Land Registration Program (PTSL) by the year 2025 (Otten et al., 2020).

The primary aim of land registration in Indonesia is to safeguard property rights and ensure the legal certainty of landowners. Through the registration process, landowners acquire a document known as a land certificate, which serves as evidence of their rights. These land certificates, governed by PP 10 of 1961 and PP 24 of 1997, carry significant evidentiary weight as outlined in BAL (Article 19 paragraph (2) letter c) (Yubaidi, 2020). In Indonesia, the validity of land certificates is contingent upon the consistency between the physical and juridical data with the information recorded in the Land Book and Measurement Certificate. Unless proven otherwise in court, these certificates are considered valid. However, if any legal or administrative deficiencies are detected in their issuance, amendments to the land certificates can still be made. This particular provision serves to protect individuals who acquire or own land in good faith (Article 32 PP 24 of 1997) (Fhonna et al., 2021).

The evidentiary strength of certificates is legally established in Article 32, paragraph (1) of Government Regulation Number 24 of 1997, which declares certificates as valid proof of rights, holding substantial evidentiary power. The information on the certificate is considered true unless proven otherwise and must align with the data in the land book and measurement certificate (Aryani & Pulungan, 2021).

For certificate holders’ legal protection, Article 32, paragraph (2) of the same regulation states that if a certificate is lawfully issued to an individual or legal entity who acquired the land in good faith and exercises control over it, other parties claiming rights to the land cannot demand enforcement of their rights if they have not objected to the certificate holder in writing and to the Head of the Land Office within 5 years from the certificate’s issuance.

This study holds significant importance as it aims to evaluate the necessity of shifting from traditional land-proof documents to digitized ones and explores the functions and benefits of electronic land certificates. By examining the advantages of this
transition, such as improved efficiency, transparency, and cost savings, the research seeks to revolutionize land registration and management processes. Embracing digital technology could streamline procedures, enhance accessibility, and foster trust among stakeholders while also contributing positively to the environment by reducing paper usage. Overall, the study's findings have the potential to inform policymakers and authorities on the potential benefits and considerations of adopting electronic land certificates.

2 THEORETICAL FRAMEWORK

In the digital age, technological advancements have made various aspects of life more convenient and efficient. The inevitable progress towards the digital age has prompted the adoption of electronic-based land services as the initial step in modernizing land administration. This process involves the creation of electronic documents and the integration of technology throughout the land administration process (Pirhonen et al., 2020). On January 12, 2021, Minister of Agrarian Affairs Sofyan Djalil issued Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 1 of 2021, marking the implementation of the electronic land certificate policy. The advantages and disadvantages of this regulation have become evident (Nurdin, 2022).

While countries like Korea, Malaysia, Singapore, and the Philippines have already implemented electronic land certificates to establish ownership rights, Indonesia lags behind in this aspect. Technology has facilitated the provision of fast, convenient, and practical services (Byamugisha, 2021). In fact, during the Covid-19 pandemic, the National Land Agency (BPN) introduced electronic-based land services in four areas: Electronic Mortgage Services, Land Value Zone (ZNT) information, checking land certificates, and issuing land registration certificates (SKPT), which are now in effect in all Land Office areas across Indonesia. However, obstacles to the implementation of electronic land certificates remain due to mixed reactions from the community (Kadarisman et al., 2022).

Concerning various types of land rights, such as land rights, management rights, waqf land, ownership rights to flat units, and mortgage rights, the evidence of ownership is established through the issuance of a certificate. This is in accordance with the stipulations outlined in Article 19 paragraph (2) letter c of the BAL and Article 1 of Government Regulation Number 24 of 1997. The land rights certificate serves as a
testament that an individual or legal entity has a legitimate claim to a specific land parcel, and it is accompanied by a measurement certificate to provide accurate details about the land.

In cases where a measurement letter is not yet available, a temporary certificate is issued instead. This temporary certificate contains a depiction of the land's condition, serving as a reference for the land's status until the measurement letter becomes available. Overall, the issuance of certificates in relation to various land rights is crucial in providing evidence of ownership and ensuring legal security for landowners and entities involved.

The apartment unit certificate is a comprehensive document that contains essential information, including a copy of the land book, a measurement letter detailing the common land, and a floor plan specifically outlining the apartment unit. This certificate is crucial in resolving disputes related to rights allocation, shared ownership, and shared objects within the apartment complex. On the other hand, the waqf land certificate confirms ownership of donated land, specifically marked as "waqf," signifying its charitable endowment purpose. This certificate ensures proper usage and management of the dedicated land (Fauziana & Mashdurohatun, 2019).

3 METHODOLOGY

This research was conducted using a normative juridical approach. The data for this study were derived from various documents and legislation pertaining to digital land certificates. These data were obtained from relevant research findings that were still applicable to the subject matter of this study. The research data collected by the researchers were processed to derive the results of this study (Efendi & Ibrahim, 2018).

4 RESULTS AND DISCUSSION
4.1 ELECTRONIC LAND CERTIFICATES IN LAND REGISTRATION LAW IN INDONESIA

The Indonesian land registration system involves the collection, processing, and maintenance of physical and legal data related to land parcels. The National Land Agency (BPN) oversees the administrative aspects, carried out by the District/City Land Office (Yulianti & Ikhwan, 2020). The objective of land registration is to ensure legal certainty and protection of land ownership. Initially, land registration excluded Customary Lands, but now it encompasses both Rechts Cadastral and Fiscal Cadastral, with the latter serving
as the basis for land tax (Suharyono, 2019). In 2021, a policy mandating electronic certificates (E-Certificates) as proof of land ownership was introduced, aiming to modernize the land sector (Liong et al., 2022). However, there have been concerns raised about data accuracy, hacking risks, and the use of certificates as collateral for loans. The gradual implementation of electronic land registration will depend on the preparedness of human resources and infrastructure in each Land Office (Kusmiarto et al., 2021). Electronic Documents generated will be validated using electronic signatures, recognized as valid legal evidence under Indonesian law (Zainuddin & Ramadhani, 2021).

The existence of an electronic certificate as evidence in court cases is significant in procedural law to establish the truth in cases involving conflicting interests. Procedural law includes known principles, such as the presumption of innocence in criminal procedures, which requires sufficient evidence according to the law. Witness evidence and the judge's conviction are necessary. The Administrative Court program recognizes the presumption of legality, and the judge can determine the burden of proof, the matters to be proven, and which evidence should be prioritized. The judge can reach a decision based on a minimum of 2 (two) pieces of evidence according to their conviction. In the Administrative Court program, there is no absolute evidence, as the focus is on proving the legitimacy of the actions of State Administrative officials. In civil cases, the plaintiff must present arguments to support their claim, while the defendant, if they refute the claim, must provide arguments to support their refusal (Maras & Alexandrou, 2019).

In civil cases, the sought-after truth is formal truth, and valid types of evidence are regulated in Article 1886 of the Civil Code and 164 HIR (Supreme Court Regulation), which include:

1. Written Evidence: Any document containing punctuation marks that serves as evidence, such as authentic deeds (made by or before a public official), private deeds (drawn up and signed by the concerned party), and other non-deed documents.
2. Witness Evidence: Testimonies given by witnesses who have firsthand knowledge or information relevant to the case.
3. Prejudice Evidence: Documents, objects, or other evidence that directly indicate the truth of a fact without requiring interpretation.
4. Confession Evidence: Statements made by a party admitting to a fact relevant to the case.
5. Oath: A formal statement or promise made by a party to assert the truthfulness of their claims.

On the other hand, in criminal cases, the types of evidence sought are regulated in Article 184 of the Criminal Code and typically include:

1. Witness Statements: Testimonies provided by witnesses who have relevant information about the crime or the parties involved.
2. Expert Statements: Opinions or conclusions provided by experts in specific fields that assist in understanding the evidence or facts of the case.
3. Letters: Written documents that are submitted as evidence in criminal proceedings.
4. Instructions: Instructions or orders given by someone in relation to the commission of a crime.
5. Defendant's Statements: Statements made by the defendant regarding their involvement or non-involvement in the crime.

In administrative cases, specifically in the context of State Administrative Court (TUN) cases, Article 100 of Law No. 5 of 2009 concerning the State Administrative Court and Law No. 9 of 2004 regulate the following types of valid evidence:

1. Letters/Writing: Documents or written evidence submitted in administrative proceedings.
2. Expert Testimony: Opinions or conclusions provided by experts in relevant fields.
3. Witness Testimony: Testimonies given by witnesses who possess knowledge or information related to the administrative case.
4. Confession of the Parties: Statements made by the involved parties admitting to facts relevant to the case.
5. Judge's Knowledge: The judge's knowledge and understanding of certain matters relevant to the case.

According to Sudikno Mertokusumo (2019), a letter or written evidence refers to any document containing punctuation marks that is intended to express one's thoughts or convey information and can be used as evidence. Article 101 of Law No. 5 of 1986 stipulates three types of letters as evidence:

a. Authentic Deed: A letter created by or before a public official who, according to laws and regulations, has the authority to issue the letter. This type
of letter is intended to be used as evidence regarding the legal events or events mentioned in it.
b. Private Deed: A letter drafted and signed by the concerned party with the intention of using it as evidence regarding the events or legal matters described in the letter.
c. Other Non-Deed Documents: This category includes documents that are not classified as deeds but are still considered letters or writings. According to Indroharto (2000), this can include documents resulting from preparatory examinations conducted to finalize a case during the pretrial examination.

Regarding their evidentiary value, electronic documents available through the Electronic System adhere to the guidelines specified in Article 5 of Ministerial Regulation No. 1 of 2021 (Permen ATR/Ka BPN No.1 of 2021). This regulation governs electronic certificates and their printouts, affirming their admissibility as legal evidence and an extension of valid evidence, aligning with the procedural law of Indonesia.

According to these provisions, e-certificates carry equal legal validity as analog certificates. They can be utilized as documentary evidence to establish rights and can serve as admissible evidence in court for the purposes of law enforcement (Oleiwi, 2023).

Although the implementation of the Electronic Certificate has been delayed, land applications received by the designated Land Office for electronic land registration will be processed based on the pre-existing provisions before the effective date of the Ministerial Regulation. However, despite the postponement, all Land Offices throughout Indonesia are actively making preparations by enhancing their human resources and infrastructure for electronic land registration (Polat & Alkan, 2020).

4.2 ELECTRONIC LAND CERTIFICATE IS INEVITABLE

The implementation of Electronic Land Certificates in Indonesia aims to reduce land disputes by introducing a digitalized system. The certificates, equipped with security features, serve as substitutes for conventional paper-based land certificates. Indonesia's move towards digitalization is in line with current technological advancements and follows the integration of electronic systems in various sectors (Kalabamu, 2021). The regulation issued in 2021 facilitates the issuance of electronic land certificates for unregistered land or as replacements for analog certificates. The benefits of this system include enhanced efficiency, legal certainty, and better protection for landowners,
potentially improving Indonesia's Ease of Doing Business ranking (Truong et al., 2023). Although the idea of electronic land registration was envisioned in 1997, the gradual transition to a digitalized system is now being realized (Mekking et al., 2021). However, before full implementation, a trial run in Surabaya and Jakarta will be conducted to evaluate results and address any issues (Saragih & Widiarty, 2022). The legal validity of electronic land certificates is supported by regulations, and the National Land Agency is collaborating with the BSSN to safeguard data security and prevent leaks, ensuring public safety and convenience in land registration (Almeida, 2021).

Another concern expressed by landowners in relation to the implementation of electronic certificates is the widespread reporting on social media and online platforms, which sometimes only presents fragmented information from articles on laws and regulations (Furszyfer Del Rio et al., 2022). For example, there have been comments regarding the withdrawal of analog certificates by the Head of the Land Office. Article 16 of the Ministerial Regulation concerning Electronic Certificates consists of four paragraphs, which are as follows:

a. Paragraph (1): The replacement of a certificate with an e-certificate includes the conversion of Land Books, Measurement Certificates, and flat plan drawings into Electronic Documents.

b. Paragraph (2): The replacement of the electronic certificate is recorded in the Land Book, measurement letter, and floor plans of flat units.

c. Paragraph (3): The Head of the Land Office retains an analog Certificate to be combined with the land book and kept as a "warkah" at the Land Office.

d. Paragraph (4): All documents are scanned and stored in the Database.

Article 16 of the regulation should not be viewed as individual clauses; rather, it constitutes a cohesive unit comprising four paragraphs. The withdrawal of an analog certificate by the Head of the Land Office is contingent upon the certificate owner (landowner) having replaced their analog certificate with an electronic certificate. In other words, the withdrawal only occurs when the landowner has successfully transitioned to an electronic certificate. It's important to note that there is no immediate mandate or obligation for the Head of the Regency/City Land Office to withdraw analog certificates as soon as the Ministerial Regulation is issued. Instead, the implementation of this regulation takes place gradually and is initially tested through a pilot project system in BPN Jakarta and Surabaya.
According to the author, the implementation of electronic certificates in Indonesia is crucial for the future, spanning from the millennial era to the Z era. However, a question arises regarding individuals from the old order era who still possess analog certificates despite the enactment of the Ministerial Regulation. To address this, the National Land Agency and the Regency/City Land Offices across Indonesia must adequately prepare their human resources and infrastructure sectors. For those who are unfamiliar with electronic land registration, the Land Office in their respective areas will provide assistance throughout the process. The initial land registration and data transfer to the Land Office are conducted through encrypted data transfer. While the Land Office continues to handle land registration, the result is now in the form of an e-certificate (Suyadi et al., 2022).

In the era of digitalization, it is essential to build policies that embrace electronic systems in the land sector (Oleiwi, 2023). This can later be integrated with the ongoing systematic land registration implemented through the PTSL program. The government aims to have all 126 million land plots in Indonesia mapped and certificates issued by 2025, thereby achieving the objective of Orderly Administration of Land Affairs. However, the successful implementation of electronic certificates relies on the readiness of human resources and infrastructure in each Regency/City Land Office, as well as continuous socialization activities carried out by the National Land Agency to educate the public.

Electronic land certificates play a vital role in establishing legal certainty for land ownership while also serving as an effective measure to combat land mafia activities and reduce disputes (Indrawan & Munandar, 2022). Despite their significant advantages, the adoption of electronic land certificates has been relatively sluggish, primarily due to a lack of sufficient public awareness among landowners regarding the process of media transfer and the benefits associated with it.

One of the key advantages of electronic land registration services is the enhanced security they offer to landowners. By utilizing electronic certificates, landowners no longer need to worry about the safety of their physical land certificates in the face of potential natural disasters, fires, or theft (Fernández et al., 2023). Instead, these electronic certificates can be securely stored at the National Land Agency (BPN), providing an added layer of protection against physical damage or loss.

Moreover, electronic land certificates contribute to streamlining administrative
processes, making land transactions more efficient and accessible. By embracing this digital approach, the land registration system can be made more transparent and reliable, ensuring the integrity of property rights and minimizing the chances of fraudulent activities.

Efforts to raise public awareness about the benefits of electronic land certificates and media transfer are crucial in encouraging a smoother transition towards a digitalized land registration system. With the implementation of electronic certificates and continued efforts to educate landowners, Indonesia can take significant strides towards modernizing its land registration processes and safeguarding property rights effectively.

5 CONCLUSION

Based on the information provided, it is evident that Electronic Land Certificates are digitally issued documents that serve as official proofs of land ownership. These certificates have been introduced by the Ministry of Agrarian and Spatial Planning/National Land Agency (ATR/BPN) in accordance with Indonesia's Land Registration Law. The primary objectives behind this implementation are to improve the overall efficiency and quality of land-related services, ensure legal certainty and protection for landowners, minimize disputes and conflicts surrounding land ownership, and curb the influence of land mafias and fraudulent activities in the land sector.

The adoption of electronic land certificates aligns with broader objectives, including promoting an environment that encourages ease of doing business and providing enhanced public services to the community. By transitioning to electronic certificates, the land registration process becomes more streamlined, transparent, and accessible to the general public. Moreover, the introduction of electronic land services by the BPN further facilitates public accessibility, making it easier for individuals to access and manage their land-related documentation electronically. This move towards digitization represents a significant step forward in modernizing Indonesia's land administration and registration processes.

Electronic Land Certificates are essential for the future of land services, although their implementation is gradual through pilot projects. They offer enhanced security and convenience in land ownership. The digitalization of public services in Indonesia has already commenced through various initiatives such as the OSS (Online Single Submission) feature, online trials (e-court), e-filing tax applications in the taxation field,
and electronic fiduciary registration. In the land sector, electronic mortgage rights were introduced in 2020. With an electronic land certificate, maintenance, storage, and protection from damage caused by flooding or loss are more convenient.

BPN has taken a pioneering approach to expand the impact of public services by enabling applicants to submit their land registration requests electronically for Electronic Land Certificates. To achieve this noble objective, extensive dissemination of information about electronic land certificates is crucial. It is essential for all members of society to recognize their validity and understand the value they bring in establishing and safeguarding property rights to real estate.
REFERENCES


