



Legal protection of land rights as an impact of the development of digital land certificate issuance

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Abstract

The existence of a land certificate can guarantee legal certainty regarding the nature of the rights it has, the subject matter of the law, and the subject of the realization of its rights. Land certificates are strong evidence of property rights, meaning that they must be considered correct until proven otherwise in court with other evidence. The approach method used in this research is the normative juridical approach method, which is legal research conducted by examining materials derived from various laws and regulations and other materials from various literatures. The issuance of traditional certificates still seems to have implementation obstacles that can have a negative impact on society. Other problems are the lack of public awareness of legal certainty regarding land certificates, obstruction of the authorities because certificate registration takes months and large costs, as well as irresponsible accountability that continues to weaken local communities, land grabbing, forgery and duplication of certificates. Based on the legal issues that the authors put forward in this study, it can be concluded that the main purpose of land registration to provide legal certainty and protection then to the holder of the land rights concerned is given a certificate of land rights.

Keywords: Digital, land rights legal protection, land certificates

Introduction

The acquisition of land rights is regulated in Law Number 5 of 1960 concerning the Basic Agricultural Law which stipulates that land registration efforts should be made in Indonesia so that the community can obtain legal certainty regarding land rights as a whole and fairly. Because land is an agricultural resource that has an important role in human life, the acquisition of land rights is regulated by law. The existence of land is important to fulfill the needs of life as its habitat. Given that land has great value for society, it is necessary to regulate its use, enjoyment, and ownership to avoid land conflicts ^[1]. Based on some of these definitions, it can be concluded that what is meant by land is the surface of the earth. The meaning of the surface of the earth as part of the land that can be inhabited by any person or legal entity, so that the rights that arise above the surface rights of the earth (land rights) including buildings or objects contained therein are a legal issue. And the legal issue in question is a legal issue relating to the adoption of principles relating to the relationship between land and plants or objects located on it.

Land has a very strategic role and function in the lives of all human beings. Therefore, land must be managed and regulated and its utilization directed to create prosperity for the community as a whole. Land plays a very strategic role in the development of a country. For human life, land not only has economic value but also religious and cultural value. This is because land is one of the areas that is very strategic for the life of the Indonesian people, and its existence also affects the livelihood of many people so that it gives authority to the state. Manage and regulate the state so that it can be used to the greatest extent for the prosperity of the Indonesian people. A land right is a right to manage land that contains a set of authorities, duties, and/or prohibitions for the right holder to do something about the land to which he is entitled. What is allowed, obliged, and prohibited, which states the content of property rights, is the

criteria or standards of property rights stipulated in the Basic Law ^[2].

Land rights are rights to a certain part of the earth's surface that is limited and has two dimensions: length and width. The use and enjoyment of the land to which UUPA entitles people and their possessions would be meaningless and purposeless if limited to the surface of the earth. Because humans need not only the space above to accommodate water and the surface, but also some of the body of the earth's surface below. Article 1 point 4 of Government Regulation No. 18 of 2021 on Administrative Powers, Land Rights, Housing Units, and Land Registration defines the notion of land rights from the legal relationship between the right holder and the land, including the above formulated as an arising right. What is meant by space is the management, ownership, utilization, development, and preservation of land and/or space below ground, land, space above ground, and/or space below ground ^[3].

The legal certainty of land rights includes security guarantees for citizens or legal entities who are right holders or designated as subjects of land rights. Legal security over real estate includes not only legal security over real estate rights, but also the location, boundaries, area or so-called real estate objects. Land registration is an obligation of the state and right holders as a guarantee of legal certainty and legal protection of land rights. Legal certainty is guaranteed through land registration throughout Indonesia, so that individuals or legal entities can obtain clear evidence of ownership of land rights.

With the existence of a land certificate can guarantee legal certainty regarding the nature of the rights it has, the subject matter of the law, and the subject of the realization of its rights. Land certificates are strong evidence of property rights, meaning that they must be considered correct until proven otherwise in court with other evidence ^[4]. When land rights holders have land certificates, problems arise such as damage to land rights certificates due to accidental damage

due to natural disasters, and damage due to damaged or torn paper due to carelessness of certificate owners often cannot be used. Another problem is the loss of land certificates whose whereabouts are unknown by the landowner, resulting in losses for the landowner.

After being entered in the land registry, proof of ownership rights over the land, called a certificate, is given. Article 32 Paragraph 1 of Government Regulation No. 24/1997 contains the following: "A certificate is a legal authorization letter that is considered strong evidence of the physical and legal data contained therein, as long as the physical data is still maintained. It is a letter of title, or proof of ownership of a legal right to land so, of course, keep this important document properly and carefully, just as you would with any other security one has. Based on this background, this research was prepared to answer how legal protection of land rights as a result of the development of digital land certificate issuance?"

Research method

The approach method used in this research is the normative juridical approach method, namely legal research conducted by examining materials derived from various laws and regulations and other materials from various literatures. In other words, this research examines library materials or secondary data. This method is used to examine the legal certainty of electronic land rights certificates in Indonesian land law [5].

This research uses a statute approach by examining the laws and regulations relating to the legal issues being addressed. For research for practical activities, this statutory approach will open up opportunities for research to study whether there is consistency and compatibility between a law and other laws or laws with basic laws or regulations and laws. The result of this is an argument to solve the issue at hand [6].

In addition to the statutory approach, it also uses a case approach, where the case approach is carried out by examining cases related to the issue being understood, and has a decision that has permanent law, which is the main study in this approach is the case ratio decidendi or reasoning, namely the consideration of the court to reach a decision. The case approach is not all in the form of court decisions but also studies the application of legal norms or rules carried out in legal practice by paying attention to their normative nature.

Results and discussion

The existence of the right to control from the State as stated in Article 2 paragraph (1) of the UUPA, namely: "on the basis of the provisions of Article 33 paragraph (3) of the 1945 Constitution and the matters referred to in Article 1, the earth, water and airspace, including the natural resources contained therein, are at the highest level controlled by the state as the organization of power of the entire community". On the basis of this provision, the State is authorized to determine land rights owned by and or granted to individuals and legal entities that meet the specified requirements. This authority is regulated in Article 4 paragraph (1) and paragraph (2) of the UUPA, namely:

1. On the basis of the State's right to control as referred to in Article 2, various kinds of rights over the surface of the earth, called land, are determined, which can be

granted to and owned by individuals either alone or jointly with other individuals and legal entities".

2. The land rights referred to in paragraph (1) of this Article authorize the use of the land in question, as well as the body of the earth and the water and the space above it, merely for the purposes directly related to the use of the land, within the limits set by this Law and other higher legal regulations."

Land registration is a series of activities, carried out by the state continuously and regularly, in the form of collecting certain information or data about certain lands in certain areas, processing, storing and presenting it for the benefit of the people, in order to provide guarantees of legal certainty in the land sector, including the issuance of evidence and its maintenance [7].

Land registration according to Article 1 point 1 of Government Regulation Number 24 of 1997 concerning Land Registration states that: Land Registration is a series of activities carried out by the Government continuously, continuously and regularly, including collecting, processing, bookkeeping and presenting and maintaining physical data and juridical data, in the form of maps and lists, regarding land parcels and units of flats, including the provision of proof of rights for land parcels that already have rights and ownership rights to units of flats and certain rights that burden them [8].

Based on the formulation of the definition of land registration in Article 1 point 1 of Government Regulation No. 24 of 1997 concerning Land Registration, it can be stated that the elements of land registration are [9]:

- a. A series of activities, that the activities carried out in land registration are activities to collect both physical data and juridical data from the land.
- b. By the government, that in this land registration activity there is a special agency that has the authority and competence, the National Land Agency (BPN).
- c. Regular and continuous, that the land registration process is an activity based on laws and regulations, and this activity is
- d. Carried out continuously, not stopping until someone gets proof of rights. Land data, that the first result of the land registration process is the production of physical data and juridical data. Physical data contains data about the land, including location, boundaries, building area, and plants on it. Meanwhile, juridical data contains data about the rights, including what the rights are, the right holder, and others.
- e. Territory, which can be the territory of the administrative unit of registration, covering the entire territory of the State.
- f. Certain lands, related to the object of land registration.
- g. Evidence, evidence of ownership of rights in the form of certificates.

Based on Article 2 of Government Regulation Number 24 of 1997 concerning Land Registration, land registration is carried out based on the following principles:

1. Simple principle: The simple principle is intended so that the main provisions and procedures can be easily understood by interested parties, especially holders of land rights.

2. **Safe principle:** The principle of security is intended to show that land registration needs to be carried out thoroughly and carefully so that the results can provide a guarantee of legal certainty in accordance with the purpose of land registration itself.
3. **Affordable principle:** The affordable principle is intended to be affordable for those who need it, especially by taking into account the needs and abilities of the economically weak. Services provided in the context of organizing land registration must be affordable by the parties in need. The principle of being up-to-date means adequate completeness in implementation and balance in data maintenance. The available data must show an up-to-date situation. For this reason, it is necessary to follow the obligation to register and record changes that occur in the future.
4. **Up-to-date principle:** The up-to-date principle requires the maintenance of land registration data continuously and continuously, so that the data stored at the Land Office is always in accordance with the real situation in the field, and the public can obtain information about the correct data at any time. The open principle is intended to be able to provide the widest possible access to the public in order to obtain information about land.

The issuance of traditional certificates still seems to have implementation barriers that can have a negative impact on the community. Other problems include a lack of public awareness of the legal certainty of land certificates, obstruction of authorities because certificate registration takes months and costs a lot of money, and irresponsible accountability that continues to undermine local communities, land grabbing, forgery and duplication of certificates^[10]. This makes the ownership of traditional land titles legally insecure. Recent developments have prompted the Indonesian government to take steps to modernize services, particularly in the rural sector.

One of them is electronic land registration, which produces the end product of an electronic land ownership certificate, which was required in 2020 due to the outbreak of the COVID-19 pandemic in Indonesia. Of course, this hinders many things, such as: Land title registration and various other obstacles due to the COVID-19 pandemic. These obstacles prompted the government to introduce electronic land title certificates, which was implemented by issuing the Regulation of the Minister of Agriculture and Spatial Planning of the Republic of Indonesia/Operator No. 1 on Electronic Certificates (hereinafter ATR). As technology continues to develop in a digital direction, BPN Ministerial Regulation Number 1 of 2021. The digital era is an era where every activity that supports our lives is facilitated by technology so that it is more practical and modern^[11].

In the land sector, electronic land services have been introduced to modernize land services, and documents are now produced in the form of electronic documents. The electronic certificate is in accordance with the Electronic Certificate Regulation of the Republic of Indonesia, Minister of Agriculture and Spatial Planning/Director of the National Land Agency, Number 1 of 2021 concerning Electronic Certificates, Article 1, 1 to 5. System. Electronic document, data, database, electronic signature. The

conditions listed in the land registration activities through this electronic system are presented in documentation in the form of survey maps, spatial plans, land plot plans, spatial plans, survey documents, plans, spatial survey documents, certificates, and others. Electronic documents, electronic certificates are of course one form of data collection in the BPN, district and city databases throughout Indonesia, and attract attention especially in terms of security, but the lightweight and easily damaged electronic system is a concern to the public because it is prone to being compromised or hacked. Electronic certificates are of course in the form of data that is compiled into one base in BPN districts and cities throughout Indonesia, which is in the spotlight, namely related to security, which is a public concern about electronic systems that are easily broken into or hacked. According to Bareskrim Polri cyber data recorded in 2020 as many as 1,300 government accounts and state institutions have been hacked, causing panic in the community because as we know Indonesia cannot be separated from the shadow of land disputes that are still being tried in court then how can electronic certificates be said to be authentic evidence if they enter the realm of civil law until the judicial process in the event of a dispute^[12].

Law No. 5 of 1960 on Basic Agrarian Law (UUPA) has been in effect since September 24, 1960, which is the main regulation governing agrarian issues in Indonesia. UUPA is a direct elaboration of Article 33 paragraph (3) of the 1945 Constitution, enacted with the aim of creating a just and prosperous society, thus serving to provide legal protection to owners of land rights. The UUPA recognizes the status of ownership to its right holders through land registration and the issuance of land certificates.

The provision in Article 19 paragraph (1) of the UUPA is a provision aimed at the government to organize land registration throughout the territory of Indonesia, and which at the same time is also the legal basis for the implementation of land registration in order to obtain a certificate of evidence of land rights that serves as a strong evidentiary tool. With this statement, the meaning of the statement is that the certificate is a strong evidentiary tool and that the purpose of land registration is in order to provide a guarantee of legal certainty in the land sector.

The main purpose of land registration to provide certainty and legal protection then to the holders of land rights concerned given certificate of land rights. The existence of the certificate then the holder of the land rights obtain strong evidence of the land, because in the certificate listed juridical data and physical data about the land. The implementation of good land registration is the basis and realization of orderly administration in the land sector. To achieve this orderly administration, every parcel of land and apartment unit, including the transfer, encumbrance and deletion must be registered.

The Government issued Government Regulation No. 18 of 2021 on Management Rights, Land Rights, Flat Housing Units, and Land Registration which improves Government Regulation No. 24 of 1997 while maintaining the objectives and systems used in land registration in accordance with the Basic Agrarian Law (UUPA). Land Registration, according to Government Regulation No. 18 of 2021, is defined as a series of activities carried out by the Government continuously, continuously and regularly, including the collection, processing, bookkeeping and presentation as well as the maintenance of physical and juridical data of each

land parcel owned by the community, legal entities and government agencies. In its implementation, the above definition is carried out based on the principles of simple, safe, affordable, up-to-date and open.

Land certificates owned by the community are paper or conventional land certificates. A conventional land certificate is a document in the form of a blank or paper, which consists of sheets containing juridical data/documents and physical data/documents correlated with the registered land parcel. Human life in the digital era makes all human activities influenced by technology, which of course makes it easier because technology is simpler and more practical, in the land sector, to balance the times and modernization, the land office service began to implement computerized land services and launched electronic certificates for land registration efficiency which aims to improve the ease of the mechanism process, reduce the number of land cases, legal certainty, reduce the number of cases in the judiciary and increase the value of property registration.

The development of technology has made the Ministry of ATR / BPN in this case trying to change the land certificate with a digital system in all activities in the land sector, the aim is to make it easier for the Ministry of ATR / BPN to monitor land mafia activities and other negative things. Land registration is also to be carried out electronically to avoid data entry errors and malicious intent. With electronic certificates, it will be easier for the government to find out if there is misuse of data or changes in the identity data of account ownership.

Legal protection is the protection of dignity, and recognition of the human rights of a legal subject in accordance with the law. In relation to consumers, it means that the law provides protection for consumer rights from something that results in neglect of these consumer rights ^[13]. Another opinion from Setiono states that legal protection is an effort to protect the public from arbitrary actions by the authorities that are contrary to the law, this protection aims to create order and peace ^[14].

Legal protection is the protection of dignity, as well as recognition of human rights owned by legal subjects based on legal provisions from arbitrariness. Legal protection is a collection of rules or rules that will be able to protect one thing from another. In relation to consumers, it means that the law provides protection for the rights of customers from something that results in the non-fulfillment of these rights.

Legal protection is a description of the operation of the legal function to realize legal objectives, namely justice, benefit and legal certainty. Legal protection is a protection given to legal subjects in accordance with the rule of law, both preventive (prevention) and repressive (coercion), both written and unwritten in order to enforce the rule of law. Understanding the meaning of law means understanding all written and unwritten rules which are usually coercive for human behavior in state society and between states which are oriented towards two principles, namely justice and effectiveness, for the sake of order and peace in society ^[15].

Conclusion

Based on the legal issues that the author raises in this study, it can be concluded that the main purpose of land registration is to provide legal certainty and protection so that the holder of the land rights concerned is given a certificate of land rights. The existence of the certificate then the holder of the land rights obtain strong evidence of

the land, because in the certificate listed juridical data and physical data about the land. The implementation of good land registration is the basis and realization of orderly administration in the land sector. To achieve this orderly administration, every parcel of land and apartment unit, including the transfer, encumbrance and deletion must be registered. Technological developments make the Ministry of ATR / BPN in this case strive to change land certificates with a digital system in all activities in the land sector, the aim is to make it easier for the Ministry of ATR / BPN to monitor land mafia activities and other negative things. Land registration is also to be carried out electronically to avoid data entry errors and malicious intent. The existence of electronic certificates, the government will find it easier to find out if there is misuse of data or changes in account ownership identity data.

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