



## Regulation of electronic land certificates for PPAT in order to realize legal certainty

Berlianinda Akhmetin Mahmudah<sup>1</sup>, I Gusti Ayu Ketut Rachimi Handayani<sup>2</sup>, Sapto Hermawan<sup>2</sup>

<sup>1</sup> Department of Law, Master of Notary, Universitas Sebelas Maret, Surakarta, Indonesia

<sup>2</sup> Lecturer, Department of Law, Master of Notary, Universitas Sebelas Maret, Surakarta, Indonesia

### Abstract

The policy on issuing electronic certificates is a new breakthrough by the government to optimize land registration processes, which previously required individuals to visit the local land office in person to register their land. However, in reality, this policy remains difficult to implement due to limitations in human resources and the uneven distribution of internet technology. Additionally, the legal framework underpinning the electronic certificate policy is frequently changed, leading to legal uncertainty in its implementation. The purpose of this study is to analyze the regulation of electronic land certificates for Land Deed Officials (PPAT), which is not yet optimal, and to examine the regulation of electronic land certificates in ensuring legal certainty. This research employs normative legal research, utilizing two sources of legal materials: primary and secondary legal materials. The data collection technique involves literature studies, and the research approach is based on statutory and conceptual case approaches. The study results indicate two key findings. First, Land Deed Officials have not been able to fully optimize the implementation of electronic certificate issuance. This is due to the requirement that, in addition to uploading supporting land registration documents online, they must also submit physical documents to the local land office, which hinders the efficiency of their duties. Second, the regulation of electronic certificates is stipulated in Ministerial Regulation Number of 2021 and Ministerial Regulation of ATR/BPN No. 3 of 2019, while personal data protection for certificate holders is governed by Law No. 27 of 2022.

**Keywords:** Electronic certificate, land deed official, electronic signature

### Introduction

Land holds a crucial role in Indonesia's life and economy. The rapid development in various sectors has turned land into a commodity with extremely high economic value, making it difficult to control. This has led many people to invest in land purchases, considering that land prices continue to rise each year. Therefore, the public requires legal certainty regarding their land ownership rights. One of the main objectives of the Basic Agrarian Law (UUPA) is to ensure legal certainty and guarantee land rights across Indonesia. To achieve this, the law instructs the government to conduct land registration.

Land registration is a series of continuous and systematic activities carried out by the state or government. It involves the collection, processing, recording, presentation, and maintenance of physical and legal data in the form of maps and lists regarding land parcels and apartment units. It also includes issuing certificates as proof of ownership for land parcels with recognized rights and ownership rights over apartment units, along with any legal encumbrances on them. Land registration is an administrative process organized by the government, delegated to the National Land Agency (BPN), with implementation carried out by the Land Office at the district or city level where the land is located. Based on these provisions, land registration falls under the autonomous authority of the District or City Land Office.

A land certificate serves as an official document proving land ownership and is the final product of the land registration process. The land registration institution in Indonesia was established in 1960 with the enactment of Government Regulation Number 10 of 1961 on Land Registration. This institution was established in response to

the UUPA, which mandates the assurance of legal certainty over land rights for the Indonesian people. Article 19 of the UUPA states that such legal certainty is realized through land registration throughout Indonesia.

The electronic land certificate policy in Indonesia is part of the government's efforts to modernize and digitize land administration. This program aims to improve efficiency, transparency, and accuracy in land data management while minimizing potential fraud and land disputes. Although the concept of electronic land certificates offers various advantages, its implementation in the field faces several complex challenges. An electronic land certificate is a digital system that replaces conventional paper-based land certificates. This system allows landowners to have easier and more secure access to their land ownership data. Additionally, the implementation of this electronic certificate policy positively impacts Land Deed Officials (PPAT), who have long been working as partners of the National Land Agency (BPN) in carrying out part of the land registration process in Indonesia, as regulated in Government Regulation No. 37 of 1998.

The performance of Land Deed Officials is expected to become more optimal with the introduction of this policy. They no longer need to submit physical land registration application documents to the local land office. However, according to Article 25 of Ministerial Regulation No. 3 of 2023, a Land Deed Official must process the transfer of land rights through the electronic system provided by the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN). Furthermore, Article 26 of the same regulation states that the examination of land registration documents must be completed within five days. If there is no response from the local land office after this

period, the documents are considered to have met the requirements for the transfer of land rights, even if the actual examination has not been conducted. This provision contradicts one of the fundamental principles of land registration, namely the security principle, as stipulated in Article 2 of Government Regulation No. 24 of 1997. This principle requires that land registration be carried out carefully and accurately to ensure legal certainty. For this reason, the author is interested in conducting research titled "Regulation of Electronic Land Certificates for Land Deed Officials in Ensuring Legal Certainty."

## Method

This research employs a normative legal research method by utilizing primary and secondary legal materials. Data collection is conducted through literature review or document study. The analysis technique applied is deductive syllogism, while interpretation follows a deductive reasoning pattern.

The analysis is based on a major premise, which asserts that law in a country must have a hierarchy or levels that must be adhered to by its citizens. The government, as the rule-maker, must comply with and follow the established regulations. This major premise is general and represents the *das sein* (reality) of this research. Next, the major premise is compared with the minor premise, which has a casuistic function and represents the *das sollen* (ideal normativity) of the research. This includes the issuance of new policies related to electronic land certificates as regulated in Ministerial Regulation of ATR/BPN No. 3 of 2023. The regulation aims to facilitate the online land registration process and enhance data security for certificate holders, preventing cases of duplicate certificates due to outdated land records.

However, in practice, the implementation of electronic certificates has caused several issues. For instance, Land Deed Officials (PPAT) are required not only to register the transfer of land rights through the electronic system but also to submit physical documents to the local land office. The local land office has a maximum of five days to review the documents. If this period expires without any response, the documents are automatically considered approved, even if no actual examination has been conducted. This policy contradicts the security principle in land registration, as stipulated in Article 2 of Government Regulation No. 24 of 1997, which emphasizes that land registration must be conducted carefully and meticulously to ensure legal certainty.

## Result and Discussion

### A. Electronic Land Certificate Regulations for PPATs that are not yet optimal

Land registration in Indonesia primarily aims to create legal certainty for landowners. However, its implementation in the field often faces various complex challenges. One of the main obstacles is the lack of accurate data and mapping of land boundaries and status. Many areas still lack adequate information, making it difficult for people to register their land. Without clear data, the recognition of land rights becomes a complicated and non-transparent process. Additionally, bureaucratic complexity serves as a significant hindrance. The lengthy and complicated registration process often discourages people from registering their land. Registration costs, which include measurement,

administration, and certificate issuance, also impose an additional burden, particularly for low-income communities. The combination of procedural difficulties and high costs results in a low land registration rate, ultimately increasing the potential for future disputes.

Low public awareness of the importance of land certificates further worsens the situation. Many people fail to understand that possessing a legitimate land certificate provides legal protection for their ownership rights. As a result, the number of unregistered land parcels remains high, escalating the risk of conflicts. Disparities in the recognition of land rights also occur, where certain groups benefit more while others are disadvantaged. Such inequality, particularly in the context of agrarian conflicts, fuels social tensions that could threaten societal stability. One of the common issues in the land registration system is overlapping certificates, where a single plot of land has multiple certificates deemed valid, leading to confusion and prolonged legal disputes. This issue not only harms landowners but also disrupts the legal order as a whole.

To address this problem, the government has introduced electronic certificates. These are digital records storing data and information regarding ownership rights, legal aspects, and the physical characteristics of the land. This system enables landowners to access and verify ownership information online, reducing administrative errors and minimizing potential disputes. In this system, recorded physical and legal data are recognized as valid proof, unless other evidence contradicts them. Furthermore, electronic certificates can expedite legal processes and reduce the risk of overlapping information commonly found in traditional documents.

Although this policy offers numerous potential benefits, it also presents various legal and social challenges. One of the primary issues is the role of the Land Deed Official (PPAT), which is crucial in the process of transferring and encumbering land rights. The PPAT is responsible for creating authentic deeds, which serve as the legal basis for land rights registration. With the introduction of electronic certificates, the previously paper-based process has now shifted to a digital system. This raises several questions, such as whether PPAT deeds remain relevant in an electronic system, how legal protection applies to these deeds, and how disputes involving electronic certificates will be resolved. The electronic certificate policy comes with both advantages and disadvantages. Several additional regulations, such as those governing Land Registration, Right to Cultivate (HGU), Right to Build (HGB), and Right of Use, as well as the Basic Agrarian Law (UUPA), are not yet fully aligned with the issuance of electronic certificates. The issue with these regulations does not lie in the electronic format itself, but rather in the government's failure to complete a crucial preliminary step namely, the systematic, nationwide, and simultaneous implementation of land registration.

Moreover, some argue that society does not yet fully require electronic certificates as proof of land ownership, and not all Indonesians have access to or the ability to use the internet. If electronic certificates only serve as a supplement or backup to physical land certificates, their issuance may be considered more practical and realistic. From another perspective, the government's initiative to enhance legal certainty over land ownership through electronic certificates is seen as a step that could benefit land administration in the

future. However, the legal validity of electronic certificates as proof of ownership must be clearly established. This is because physical certificates, which have long been used by landowners, will eventually be replaced by electronic certificates. People tend to resist changing their method of proving ownership if the legal strength of electronic certificates is perceived as weaker than physical certificates. Conversely, if electronic certificates hold equal or even stronger legal validity, there would be no reason for the public to reject their implementation.

Legally, electronic certificates have a strong foundation. Ministerial Regulation ATR/BPN Number 3 of 2023 refers to the Electronic Information and Transactions Law (UU ITE), which recognizes electronic documents as legally valid evidence. Additionally, Law Number 6 of 2023 on Job Creation further strengthens the legal basis for digital transformation across various sectors, including land administration. However, challenges arise in terms of implementation. Many Indonesians still perceive physical documents as safer and more reliable than electronic ones. Concerns over data security, potential hacking, and the risk of document loss due to system failures remain significant issues.

A PPAT deed is an authentic deed created by a Land Deed Official (PPAT), who is authorized to carry out legal actions related to land rights or ownership of apartment units. According to Article 1868 of the Indonesian Civil Code (KUHPer), a document can be classified as an authentic deed if it meets three criteria:

1. It is made by or before a competent public official,
2. It is drafted in a legally prescribed format, and
3. It is issued in accordance with applicable legal provisions.

A PPAT deed derives its authenticity not merely from regulatory provisions but from the fact that it is created by or before an authorized PPAT official. Theoretically, an authentic deed is a document that is deliberately created as formal evidence from the outset. An authentic deed must comply with the provisions of Article 1868 of the Civil Code, meaning it must cumulatively fulfill all prescribed requirements. Furthermore, Article 1870 of the Civil Code states that authentic deeds carry absolute evidentiary power regarding their contents. A PPAT deed, as an authentic document, has undeniable evidentiary authority when issued by a duly authorized PPAT official. The rapid advancements in science, technology, and information in the era of globalization have influenced various government sectors, including land administration. Adaptation is necessary through relevant legal frameworks, such as Law No. 19 of 2016 on Electronic Information and Transactions, which is further elaborated in Government Regulation No. 71 of 2019 on Electronic Systems and Transactions. Articles 1(4) and 1(5) of this regulation define electronic system providers, including government institutions and designated entities.

This electronic-based system can be applied in various fields, including land registration mechanisms and document issuance. Electronic land registration is regulated under Ministerial Regulation ATR/BPN Number 1 of 2021 on Electronic Certificates. The documents produced fall under the definition of electronic documents as stated in Article 1(2) of the regulation, which describes them as electronic information that may include text, sound, images,

maps, and other legally recognized data. These electronic documents contain ownership data, physical data, and legal data, all of which are stored in an electronic database system. The process involves data collection, processing, and presentation, ultimately producing a document validated with an electronic signature by an authorized official.

The implementation of this regulation affects both land that is about to be registered and land that has already been registered. According to Article 12 of the regulation, land with certain legal statuses, such as ownership rights, management rights, or waqf (endowment) land, must be registered electronically, and an electronic certificate (e-certificate) will be issued. However, if physical or legal data is incomplete or under dispute, the registration process will be postponed. For land that already has an analog certificate, the document will be replaced with an e-certificate upon submission of a data maintenance request, ensuring that the old data matches the information in the electronic system.

From a regulatory standpoint, the electronic land registration system already has a solid legal foundation and is integrated into existing policies. However, implementing this regulation requires readiness from various stakeholders, including both the electronic system administrators (the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency ATR/BPN) and the general public as applicants. Since this regulation came into effect in January 2021, public outreach efforts have been conducted through various media to enhance public understanding of electronic certificates. As of today, the transfer of land rights through a Land Deed Official (PPAT) can be processed electronically, significantly improving efficiency in handling seller and buyer documents without requiring physical submission to the local land office. However, in practice, this policy has not been fully implemented by land offices. PPAT officials are still required to submit the original deed and supporting documents for land rights transfers. Legal Certainty and Hans Kelsen's Theory Hans Kelsen's legal certainty theory states that laws containing general rules serve as guidelines for individuals in society, both in interpersonal relationships and societal interactions. The existence and implementation of such regulations create legal certainty. In this case, land registration has now shifted to a fully digital system to optimize registration service times, as stipulated in Article 25 of Ministerial Regulation ATR/BPN Number 3 of 2023. However, PPAT officials—who play a crucial role in land registration—are not yet able to operate optimally due to the land registration system still not being fully digital, as required by the regulation. Since PPATs are still obligated to submit physical documents to local BPN offices, this creates a gap between regulation and implementation, leading to legal uncertainty. As a result, land registration through PPATs remains inefficient, preventing them from fully optimizing their services to the public.

## **B. Regulation of Electronic Land Certificates to Achieve Legal Certainty**

In general, individuals who wish to obtain a land certificate must first go through the land registration process. Land registration is a series of continuous and systematic activities carried out by the state/government. This process involves the collection, processing, recording, presentation, and maintenance of physical and legal data related to specific land parcels within designated areas. The information is stored in the form of maps and registers and

includes the issuance of certificates as proof of ownership for registered land parcels, ownership rights over apartment units, and any encumbrances on the land.

Land registration is also an administrative process conducted by the government to provide legal certainty and protection for landowners. The legal basis for land registration in Indonesia is outlined in Article 19 of the Basic Agrarian Law (UUPA), while the technical implementation is governed by Government Regulation (PP) No. 24 of 1997 on Land Registration and Government Regulation No. 18 of 2021. The result of land registration, as per government regulations, serves as proof of ownership for land rights, management rights, waqf land, ownership rights over apartment units, and mortgage rights, all of which are recorded in the respective land books.

Electronic documents issued through an electronic system are authenticated using electronic signatures in accordance with applicable laws and regulations. Additionally, media-converted electronic documents are validated by authorized officials or designated officials and affixed with a digital stamp through the electronic system. The printed version of an electronic document serves as legally valid evidence and an extension of legally recognized evidence under Indonesia's procedural law. For evidentiary purposes, these electronic documents can be accessed through the electronic system.

The transition to electronic land registration services was actually planned since the enactment of Government Regulation No. 24 of 1997, particularly in Article 35, paragraphs (5), (6), and (7), which state:

*"Gradually, land registration data shall be stored and presented using electronic equipment and microfilm. Documents recorded using electronic devices or microfilm shall have probative value once signed and stamped by the Head of the relevant Land Office. The form and methods of storing, presenting, and deleting such documents, as well as the storage and presentation of land registration data using electronic equipment and microfilm, shall be determined by the Minister."*

Thus, land registration activities will eventually result in electronic documents. An electronic document is any electronic information that is created, forwarded, sent, received, or stored in analog, digital, electromagnetic, optical, or similar forms. These documents can be viewed, displayed, and/or heard through computers or electronic systems and are not limited to writings, sounds, images, design maps, photographs, letters, symbols, numbers, access codes, or perforations that carry meaning or can be understood by competent individuals.

Electronic documents represent a transformation from conventional documents, replacing traditional paperwork with digital formats. This initiative is part of the government's effort to adapt to technological advancements in an increasingly digital era. By implementing regulations on electronic documents, the government aims to streamline public services while enabling the public to participate in monitoring government activities. Regulations concerning electronic documents are outlined in Article 1, paragraph 4 of Law No. 19 of 2016. The electronic certificate regulation is further stipulated in Ministerial Regulation No. 3 of 2023 to support the implementation of E-Government in land administration.

Land registration in Indonesia aims to provide legal certainty (rechts cadaster) regarding land rights and legal

protection for land ownership. By registering land, the owner of the land parcel will receive a legal proof document as evidence of ownership, ensuring the certainty of their legal rights. The implementation of land registration based on recht cadaster is intended to guarantee legal certainty and protection for land rights holders. The final output of the land registration process consists of the Land Book and Land Certificate, which include a copy of the Land Book and a Measurement Letter. When linked to Lon Fuller's legal system theory, Ministerial Regulation of ATR/BPN Number 3 of 2023 violates three out of the eight principles of legality, namely:

**a. Regulations should be formulated in a comprehensible manner**

Article 25 of Ministerial Regulation of ATR/BPN Number 3 of 2023 states that in the case of a request for Land Registration Data Maintenance based on a deed made by a Land Deed Official (PPAT), the PPAT must submit the documents and the deed within 7 days after signing. This submission is mandatory, and if violated, the PPAT may be subject to sanctions by the local National Land Agency (BPN) due to negligence. Once the documents are submitted, the local Land Office officials will review the deed and supporting documents to ensure compliance with the applicable laws and regulations at that time. According to Article 26, Paragraph 3, the review results must be issued within 5 working days after the document submission. However, Paragraph 4 of the same article states that if the review exceeds 5 working days, then the deed and documents are automatically considered compliant with the applicable regulations. This contradiction between Article 26, Paragraphs (3) and (4) creates legal uncertainty in the execution of a PPAT's duties. It raises concerns about whether the review process is conducted thoroughly by the local Land Office or if it is merely a formality. Therefore, the BPN should ensure that policies are clear, firm, and easily understood by the general public.

**b. Regulations Should Not Be Frequently Changed**

The regulatory update on electronic certificate issuance began with the enactment of Law Number 11 of 2020 on Job Creation and its derivative regulations, including Government Regulation Number 18 of 2021. However, in 2020, this regulation faced strong opposition from the public and was challenged in the Constitutional Court. The court ruling, as stated in Decision Number 91/PUU-XVIII/2020, partially granted the lawsuit, declaring that the Job Creation Law was unconstitutional and conditionally unenforceable unless revised within two years of the ruling.

Despite the Constitutional Court's decision mandating revisions to Law Number 11 of 2020 on Job Creation, the government did not make the required corrections. To prevent the law from becoming permanently unconstitutional, the government issued Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation, which essentially repealed Law Number 11 of 2020. However, the substance of the Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation remained the same as the Job Creation Law. Subsequently, this regulation was ratified into Law Number 6 of 2023 on the Establishment of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation. The Ministerial Regulation of ATR/BPN Number 1 of 2021 on the Issuance of Electronic Documents in Land Registration

Activities contains provisions that have been frequently modified, particularly concerning the issuance of electronic certificates. Even though electronic certificates were already regulated under Ministerial Regulation of ATR/BPN Number 1 of 2021, continuous changes in these regulations have led to legal uncertainty. The frequent amendments create confusion among stakeholders, making it difficult to ensure consistent implementation and compliance with the law.

### c. A legal system must not contain regulations that conflict with each other

Electronic certificate regulations are regulated in Ministerial Regulation Number 3 of 2023, one of the articles of which states that a Land Deed Making Officer has an obligation to immediately report the deed of transfer of land rights, no later than 7 days after signing the deed. The report includes the deed of transfer of land rights and supporting files of the parties who are transferring land rights through the electronic system belonging to the Ministry of ATR/BPN which functions to examine the deed made by the Land Deed Making Officer and the supporting files have been fulfilled or there are still files that need to be completed, after the report, the local land office has an obligation to provide the results of the report to the Land Deed Making Officer for 5 working days. If there is no news after 5 working days, the report made by a Land Deed Making Officer is considered to have been approved by the local land office even though the local land office does not examine the deed and supporting files, this has been regulated in Articles 25 and 26 of Ministerial Regulation Number 3 of 2023.

The policy in Articles 25 and 26 of Ministerial Regulation Number 3 of 2023 is contrary to the principle of safe land registration as regulated in Article 2 of Government Regulation Number 24 of 1997. The principle of safety itself is that land registration must be carried out carefully and precisely so that the results can provide a guarantee of legal certainty in accordance with the purpose of land registration itself. Of course, this is in contrast to the current electronic certificate registration policy which states that the land office has an obligation to check the deed and supporting files for the transfer of land rights, but in the Regulation of the Minister of ATR/BPN Articles 25 and 26 it states that the land office can pass the deed and supporting files by exceeding 5 working days and is considered to have met even though it is not checked by the local land office.

### Conclusion

The regulation of electronic land certificates for PPAT is still not optimal, because in practice in the field, the Land Deed Making Officer is still obliged to submit the physical documents of the deed and its supporting documents to the local land office after notification from the local land office if the deed and its documents are considered to be in accordance with the regulations in force at that time. This causes legal uncertainty regarding the land registration process because the Regulation of the Minister of ATR/BPN states that the Land Deed Making Officer only needs to upload the deed and documents to the available electronic system and a maximum of 5 working days later there will be a notification regarding the upload.

The regulation of electronic certificates in Indonesia is regulated in the Regulation of the Minister of ATR/BPN

Number 3 of 2023 which has regulated the procedures for issuing electronic certificates and the legal force of electronic certificates, but there is a policy for issuing electronic certificates that creates legal uncertainty in the issuance of electronic certificates if it is related to Lon Fuller's legal system theory where the regulations are formulated in a formula that can be understood, A legal system must not contain regulations that conflict with each other and there must be consistency between the regulations that are promulgated and their daily implementation.

### References

1. Bachtiar Effendie. *Pendaftaran Tanah Di Indonesia Dan Peraturan Pelaksanaannya*, 2005.
2. Ardani MN. *Tantangan Pelaksanaan Kegiatan Pendaftaran Tanah Sistematis Lengkap dalam Rangka Mewujudkan Pemberian Kepastian Hukum*. *Gema Keadilan*, 2019;6(3):268-286. doi:10.14710/gk.2019.6659
3. Farid DA, Urowi E, Revalina A, *et al.* *Pancasila sebagai Sumber Hukum dalam Sistem Hukum Nasional*. *JERUMI J Educ Relig Humanit Multidiciplinary*, 2024;2(1):477-485. doi:10.57235/jerumi.v2i1.2007
4. Masri E, Hirwansyah. *Kebijakan Penerbitan Sertipikat Elektronik Pada Sistem Pendaftaran Tanah di Indonesia Untuk Mewujudkan Kepastian Hukum*. *Krtha Bhayangkara*, 2023;17(1):157-174. doi:10.31599/krtha.v17i1.2109
5. Pohan MN, Hidayani S, Munawir Z, Info A, Tahanan R. *Penandatanganan Akta Notaris Di Rumah Tahanan*, 2021;1(2):72-76.
6. Susilawati T, Asikin Z, Suhartana LWP. *Implementation of Electronic Transactions of Notary's Deeds in Improving Legal Certainty and Data Security*. *Path Sci*, 2024;10(1):8024-8033. doi:10.22178/pos.100-33
7. Waris F, Nawi S, Qahar A. *Pelaksanaan Penyelenggaraan Sistem Pelayanan Hak Tanggungan Terintegrasi Secara Elektronik Pada Kantor Pertanahan Kabupaten Bantaeng*. *J Lex Gen*. 2021;2(September). <http://www.pasca-umi.ac.id/index.php/jlg/article/view/653%0Ahttp://www.pasca-umi.ac.id/index.php/jlg/article/download/653/709>
8. Wiryani F. *Hukum Agraria Konsep Dan Sejarah Hukum Agraria Era Kolonial Hingga Kemerdekaan*. Setara Press, 2018.
9. I Ketut Oka Setiawan. *Hukum Agraria*. Reka Cipta; 2021.
10. Parlindungan A. *Pendaftaran Tanah Di Indonesia*. Mandar Maju, 2009.