

## **Legal Certainty of Ownership of Electronic Certificates as Proof of Control of Land Rights in the Indonesian Land System**

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### **Abstract**

*Land certificates are a form of legality that can provide legal force for landowners. Land certificates are analog documents held by each party with authority over the land. In 2021, the ATR/BPN Ministry will form a regulation that land certificates will be realized in electronic land certificates. The electronic land certificate has a substitution function that replaces conventional certificates in the form of analog documents. However, there are several problems related to implementing the electronic certificate. One of the problems related to electronic certificates is public concern regarding the position of electronic certificates in the legal realm and the legal certainty possessed by certificate holders. Therefore, this study aims to analyze the position and legal certainty of ownership of electronic land certificates as proof of land rights. The research method used is juridical-normative qualitative through a literature study approach. The study results show that ownership of electronic land certificates has a strong position in the eyes of the law and has legal certainty that can be accounted for.*

**Keywords:** *Certificate; Land; Electronic; Legal certainty; Land rights.*

## **1. INTRODUCTION**

1.1 Development in the era of globalization focuses solely on economic expansion without regard for the ramifications that have gained much attention

Land affairs are one of the affairs that often cause polemics. This is related to the existence of land, which from year to year, has narrowed due to the increasing population density. Soil has become an important element in human life (Febrialma & Aryaputra, 2022). It is not surprising that the economic value of land always increases from time to time. This is what causes frequent land disputes and land rights struggles. This condition ultimately encourages the creation of regulations related to the legality of land ownership. (Setiabudhi, 2016) One of the current government programs is Nawacita, where one of the important points contained in it is to increase the productivity and competitiveness of the community (Wiryani & Najih, 2021) Agrarian reform is said to be one solution to this.

Landowners willing to register their land parcels will get a certificate as proof of the legality of their rights to the land. Therefore, the existence of land certificates has a high level of urgency because it can be a source of legal force when there is a dispute over rights to soil. Land certificates are also one of the elements taken into consideration when there is a transaction on a piece of land. People who want to get the legality of land rights by taking care of certificates generally need a long time and much money. Especially in

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people who are unfamiliar with the law. Land rights themselves are divided into Property rights, usufructuary rights, and usufructuary rights (Christine & Amboro, 2021)

Along with information and communication technology development, various innovations to facilitate the ownership of land rights certificates are increasingly developed. In 2021, the Ministry of Agrarian and Spatial Planning/ National Land Agency responsible for land in Indonesia has set a number of regulations related to this. Based on the Minister of ATR/Head of BPN (Candy ATR/Ka. BPN) Number 1 of 2021, it is stated that the Ministry can already provide land certificates in the form of electronic certificates. This digital certificate or e-certificate is often called the Electronic Land Certificate (STE). The emergence of STE is based on the desire of the ATR/BPN agency to make it easier for the community to access their land rights (Widiyantoro, Guntur, Rahmanto, & Wahyuningrum, 2022). However, this electronic certificate apparently also reaps some pros and cons because of the emergence of many considerations from many points of view. The Secretary General of the Agrarian Reform Consortium mentioned several problems that may occur from the existence of the STE, such as problems related to government land validation. (Ghaniyyu, Pujiwati, & Rubiati, 2022) The community also objected to the existence of the electronic land certificate because the community was still in the euphoria of owning the analog certificate that had just been obtained through the distribution of free certificates by the government (Mujiburohman, 2021).

There is anxiety that arises in the community when going to use electronic certificates. Anxiety that arises revolves around anxiety about the level of legal certainty of electronic certificates and about hacking that increases the potential for certificate forgery. The public still doubts the legal force of electronic certificates in the future (Putri, 2022). Public anxiety is also related to the transfer of electronic liability rights, which the public does not understand widely (Puspitasari, 2021). The cyber security system in Indonesia is still vulnerable to hacker attacks. Therefore, many people still prefer to use certificates in conventional form rather than by using the latest technology in digital entries. It has been written in regulation that there is legal certainty guaranteed the level of validity in the use of electronic certificates.

Based on the description of the conditions already mentioned, this study raises the formulation of the problem in the form of how to take a legal position on the ownership of electronic certificates as evidence of land control in the Indonesian land system and how What is the certainty of ownership of land rights that are el electronics certified in realizing the development of Indonesian land law? This study aims to determine and analyze the legal position and certainty on ownership of land rights for owners of electronic certificates. It is hoped that this research can provide benefits to people who do not understand the use of electronic certificates and the legal status of electronic certificates. This research is also expected to contribute to the development of science, especially in land law.

## 2. METHODS

The research method used is qualitative. This research refers to normative juridical research methods guided by the values and norms of laws and regulations (Soekarto in Harahap, 2021). The approach taken in this research process is conceptual. A conceptual approach is an approach that involves views or doctrines that have developed in legal science, which can then give birth to new and relevant legal concepts or legal principles that can be used as a reference in determining an argument in solving ongoing legal issues. This research is also a library-based research (Library research), which is a research technique that uses references in the form of books, books or other scientific publications that have a high level of relevance to the discussion. The literature used has been published in the last 10 years and has the quality of publication as an indexed journal. The data used in this study are secondary in the form of publication data from

various literature and regulations. Data is obtained through literature observations conducted by researchers.

### **3. RESULT AND DISCUSSION**

#### **3.1 Position and Legal Certainty of Electronic Certificate Ownership as Proof of Land Tenure in the Indonesian Land System**

Basically, the earth and its natural resources belong to the common property of the earth's population. In the beginning, there was no ownership of everything on earth. This encouraged the emergence of free competition, which eventually gave rise to the concept of the common property, which explains that in this concept, no one gets ownership rights, rights What a person has is only a right of use (Bola, 2017). Property rights in Western Law are classified into 3 types of rights, namely individual property rights, common property rights, and state property rights. The granting of rights to authorized persons has a close relationship with the economic and political conditions held in the region.

In philosophy, politics, and economics in the 17th and 18th centuries, private property to be owned and transferred was a natural right of the individual. This concept is based on the teachings of John Locke (1632-1702) known as the Labor Theory of Property based on natural law. This shows that private property rights existed long before the state's existence and are free from laws regulated by the state. Property rights are natural rights where natural law is regulated based on the principles of natural justice. Therefore, the government prohibits regulating these rights without the rights owner's permission. As quoted by Panesar, John Locke stated that: Property rights existed before the state and regardless of the laws determined by the state. Property rights are the natural rights of individuals and those governed by the principles of justice; Government interference in reorganising these rights is not allowed without concessions from individuals. According to John Locke, property rights existed before the state, and the state determined the rules. Property rights are the natural rights of every individual based on the principle of justice. Government relations in realigning such rights can be exercised as long as the last concessions to individual rights. According to John Locke, natural rights are passed down by God based on moral, universal principles that contain the right to life and the demands of happiness. Therefore, human beings are not possessed absolutely. Thus, the government to protect property rights is the right to life and liberty.

In Indonesia, the development of the welfare state resulted from the transition from *rechtsstaat* to the principle of *nachtwacherstaat* (night watch state), which uses *staatsonthouding* or limiting the role of government in the political field. Less government is best because of the principles of *laissez-faire* and *laissezaller*, which prohibit the state from interfering in the economic life of the people. This principle has a negative impact on people's lives in terms of misery. It triggers the development of concepts that allow the government to take full responsibility for the welfare of society. *Staatsbemoeinis* is the principle used because it requires people to be actively involved in economic and social life. According to Friedmann, the role of government in advancing public welfare is closely related to the four functions of the state, namely as a provider, regulator, entrepreneur, and referee. Therefore, implementing equity becomes integral to achieving justice and the Welfare State goals.

The use of state wealth through equity is one of the government's efforts to achieve public welfare. This shows that capital participation becomes an effort to realize social justice with a popular dimension when associated with the theory of justice initiated by John Rawls. The role of the State as a regulator through equity shows that Indonesian land can truly realize the greatest prosperity of the people. Furthermore, the separation of state wealth impacts land tenure and ownership administration changes. The government

becomes a shareholder through capital participation when owning the property. Land removal is the transfer of full authority to a state-owned enterprise to manage land and ensure it contributes to development goals. Asset legality through issuing land title certificates to state-owned enterprises is one of the efforts to realize certain goals. This gives companies the same obligations as humans as holders of rights in ownership and control of the land. The essence of legal certainty lies in the certificate's strength as proof of ownership. Indonesia has several land statuses, including customary land rights, Swapraja, and ex. Swapraja, as well as state land. The Basic Agrarian Law specifies that land rights are granted to provide certain guarantees through registration of wealth status. To obtain rights, state-owned enterprises must comply with the correct procedures and ensure their use does not conflict with the National and Regional Spatial Plans. This is in line with the increasing human population, which causes a high need for land. (Ilyas & Hamzah, 2022)

The subject of rights influences the realization of the guarantee of legal certainty of land title certificates. Subject certainty plays an important role in showing who controls land tenure. Therefore, the elements to be studied are related to the subject's identity, domicile, occupation, citizenship, and others. From the legality aspect, the rights holders listed in the certificate are legal entities. This differs from the registration of state-owned land rights, whose holder is the Indonesian government. The difference clearly shows that land is not a state asset. Furthermore, physical tenure is a determining factor in the relationship between the land and its subject matter.

At present, proof of ownership of land rights in Indonesia is represented by the ownership of a piece of land. A land certificate is a document with a physical form which is a statement that a piece of land is legally owned by an individual or entity law. The land certificate should be evidence that has permanent legal force. However, based on the Basic Agrarian Law, it is stated that there is still the possibility that other parties can control the land. This can happen if a party states that he is the owner of the land, then the party makes a civil lawsuit to the General Court or sue the Head of the Land Agency through the State Administrative Court. The lawsuit can be granted then the ownership of the land rights can change hands.

Etymologically, possession comes from the word "power" which means the ability or willingness to do something, power or authority over something or to determine (rule, represent, govern and so on) something. At the same time, "ownership" can be defined as the process, way, action to have or ability to use something. Unlike the use of rights, ownership is clearer and more certain. Possession indicates the relationship between a person and an object subject to ownership, a complex consisting of rights classified in *ius in rem* since it applies to everyone and *ius personae* that applies to a specific person. Based on the concept of ownership above, it can be said that control is the beginning of ownership (ownership) where the sense of ownership itself is attached to the right so that the term individual property rights can be distinguished to indicate individual property rights, and public property and state property. Therefore, such possession still requires legal intervention to determine whether the possession is recognized and protected or otherwise does not obtain legal recognition.

Government Regulation No. 24 of 1997 is a significant policy for land ownership so that physical evidence alone for 20 consecutive years or more supported by the owner's good faith, can be used as proof of land ownership. That notion of "possession" can be used in both physical and juridical senses. And also privately and publicly. Ownership in the juridical sense is property based on rights, which are protected by law and generally authorize the right holder to physically control the land, for example, the landowner to use or utilize the land to which he is entitled, not by way of delegation. There is juridical tenure, which even gives authority to control land that is physically entitled, even though other parties carry out physical control. For example, someone who owns land does not use his own land but is leased to other parties. In this case, legally, the land is owned by

the landowner but physically carried out by tenants. Legal tenures also do not give authority to control the land concerned physically. Furthermore, the title to land contains a series of authorities, obligations, or prohibitions for the right holder to do something about the land to which he is entitled. Something that is permissible, obligatory, or prohibited to do is the content of tenure which is a criterion or benchmark for distinguishing between tenure rights regulated in the Land Law.

So far, proof of land ownership in Indonesia is carried out by ownership of land certificate documents in the form of printed documents. Conventional land certificates are said to be quite easy to counterfeit so there are often land disputes with claims that each has ownership rights to the land because it owns certificates. Therefore, digital transformation provides innovation in the form of the use of electronic certificates on soil certificates. Electronic land certificates can be accessed when someone registers land that is new or has no ownership status. It can also be used on land that already has ownership status, namely by applying for a replacement for a land certificate. The land registration system in Indonesia uses a negative publication system where the existence of certificates as proof of ownership has a strong but not absolute nature (Susanto, 2014). Land rights are in the form of letters made by sub-districts or notaries in various forms and to make written evidence of land occupied by residents. Issuance of evidence of land tenure, some are built on land that has not been converted and lands controlled by the State and then the land is occupied by the people, either intentionally or arranged by the Village Head and approved by the Sub-District as if this were the land to which a person or customary rights group is entitled.

In its development, land rights were known as Land Certificates. The sub-district certificate of the land is required as a right to the transfer of land that has not been certified which still transferable state land or compensation is by or before the sub-district called a Statement of Release with Indemnity. The sub-district certificate on land is the right to land that will be used if efforts are to be made to upgrade the status of the land to a certificate of land rights at the local Land Office. Any person who argues that he has a right or to assert his own rights or denies the rights of others, refers to an event that must prove his right or that event. Among the many legal relations in society, many events cause disputes, such as buying and selling land which is a form of land transfer. In resolving disputes in court, each party will submit contradictory arguments where the judge will examine and determine the correct propositions and incorrect propositions according to the rules of evidence.

Basic Agrarian Law (UUPA) is a unification in the field of agrarian law. Thus, there is only one agrarian law system that applies throughout the territory of the Unitary State of the Republic of Indonesia and applies to everyone. However, the UUPA essentially recognizes land rights that were owned before the Law came into force, but must be adjusted to the rights stipulated in the UUPA through conversion rules that do not contradict the provisions of the UUPA, especially provisions that indicate the nature of the nationality of the UUPA, namely that only Indonesian citizens or legal entities can have a complete relationship with the earth, water and space.

A certificate is a letter of proof of rights that applies as strong evidence of physical and legal data, in accordance with the data contained in the relevant letter of measurement and land rights book. That is, the law only guarantees evidence of someone's property rights, and the evidence is not the only evidence, only as strong evidence. The certificate of land rights is not only absolute evidence, on the contrary preliminary evidence that can be abolished at any time by other more authoritative parties.

In the new draft law, the terms "ownership" or "possession with owned" or "property in the context of the judiciary" have different meanings and also different laws. The meaning of "owned" is not synonymous with the meaning of "possessed". Suppose it is mentioned that land is owned or owned in the sense of "ownership". In that case, the

juridical sense of land is owned by people physically and in the factual sense tilled, and inhabited, but not necessarily legally it is the owner or owns the land. Similarly, if it is mentioned that the land is owned or owned in the sense of "ownership" in the juridical sense, it means that the land is legally owned or owned, but it does not mean that it is physically in possession of the land to be possible. Certain cooperative or contractual relationships.

Land ownership rights can include three conditions, namely the essence of ownership, recognition of the competent authority, and the right to carry out economic activities on the land. (Destriana & Allagan, 2022) The rights accompanying landowners who intersect with economic activity are to carry out sales and purchase transactions on land, make lease transactions, and obtain profit for all activities carried out on the land (Alimuddin, 2021). In this case, it is appropriate for the state to provide welfare guarantees for the community. It is appropriate for the state to be present to protect and guarantee ownership rights over land and prevent all actions that have the potential to cause losses and indicate that they contain land abuse.

Legal guarantees for land rights owners can be found in the following articles:

1. Article 19 paragraph 2c which states that land registration may include the provision of a certificate of proof of ownership rights that can act as strong evidence;
2. Article 23 paragraph 2 explains that the registration of land rights is a strong evidentiary tool regarding the loss of property rights and the validity of the transfer and encumbrance of rights;
3. Article 32 paragraph 2 which explains that the registration of land rights is a strong evidentiary tool regarding the transfer and abolition of the right to use, except in the case where the right is abolished because the period has expired;
4. Article 38 paragraph 2 which states that registration of land rights is a strong evidentiary tool related to the abolition of building use rights and the validity of the transfer of rights except if The right is removed due to the expiration of the term.

Although the emergence of electronic land certificates is considered a breakthrough, more concise, and keeps up with the times, many are still reluctant to use and access ownership electronic certificate (Silviana, 2021). The ability to make digital access is one of the triggers for people's reluctance to use electronic certificates. Land ownership is quite widely owned by people of old age who can no longer keep up with technological developments, especially to access the digital world. Therefore, the reluctance to use electronic certificates becomes greater. Knowledge of access to the digital world is ultimately the biggest influence on people's reluctance to use electronic land certificates.

Another factor that influences people's reluctance to use electronic certificates is social factors. This social factor is related to people's habits. People assume that electronic ownership of certificates does not provide satisfaction equivalent to ownership of analog certificates. Pancasila as the nation's ideology views the problem of this land concept as a problem that contains philosophical, political, and social values. (Suharyono, 2019) In addition, many people also think that certificates owned electronically are more prone to being hacked and taken over by their ownership rights. The community feels that it is better able to store physical land certificates than electronic certificates that can be accessed anywhere. The emergence of these feelings stems from a sense of public disappointment and distrust of the system that has been put in place by the government. People are also reluctant to use electronic certificates because they are still hesitant about the position of electronic certificates before the law. Therefore, the use of STE must be balanced with an increase in various other supporting matters, especially those related to juridical aspects (Sapardiyono & Pinuji, 2022).

Several cases mentioned by the community related to electronically using certificates of ownership of land rights. These cases include electronic certificates can only be applied effectively if the ATR/BPN already has data on land stocks throughout Indonesia for the implementation of validity, While currently, this is still not possible (Prasetio, 2022). The ATR/BPN party so far does not have valid data regarding the ownership of land parcels in Indonesia, this can be proven by the occurrence of land disputes and several cases of seizures Land with respective claims has an original letter. Indonesian people's understanding of digital access is still quite limited, especially in matters related to e-government. Not all people who have the ability to access social media can also use devices to access e-government. This is because there is a difference between social media access procedures and other electronic media access. As with electronic land certificate access, people are required to do various fields to get an electronic certificate. These contents sometimes use legal or other scientific terms that the public does not understand well. This is where the role of notary assistance in accessing electronic certificates is very necessary (Pratama & Agustini, 2022).

The ATR/BPN said that using electronic certificates aims to increase efficiency in the legal ownership of land. The use of integrated electronic certificates is also expected to reduce the number of disputes caused by land disputes, or other matters related to conflicts in land occurrence. The application of the electronic certificate makes the ATR/BPN ministry have to withdraw the analog certificate currently held by the public because the nature of the electronic certificate is as a substitute for analog certificates. This has caused public concern. The public is worried if there are individuals who can cause losses during the certificate withdrawal activity. In addition, this activity is certainly contrary to the land publication system in Indonesia which adheres to a passive negative system. If the land party is required to withdraw certificates from the community, the system will certainly shift to active and no longer passive.

Electronic land certificates basically consist of data maintenance activities, land registration, and conversion activities from analog certificates to electronic certificates (Margaret & Sapardiyono, 2021). In the conversion process, the act of alteration is not only intended for certificate documents but also for various supporting documents such as land books, certificates of results land measurements, floor plans and drawings of land parcels. Also included are various certificates related to the existence of land such as death certificates, heir statements, and letters from Land Deed Making Officials. Electronic certificates will be issued through electronic systems that are considered valid and there will be a digital signature stating that the certificate is valid and can have force law.

Legal certainty in the implementation of land registration activities during the initial conversion of physical certificates to electronic certificates in Article 14 of the Regulation on electronic certificates ATR/KBPN stipulates that the implementation of the conversion of physical certificates into electronic certificates is carried out for land that is exempt certificates have been issued and carried out only in terms of maintaining land registration data, meaning that the land office cannot play an active role do so. However, it will happen if there is a request for data maintenance submitted by the applicant above the (Widyastuti, 2021) land queue, without data maintenance, there will be no conversion to electronic certificates, as well as revocation of existing physical certificates in the community. (Wiriani & Kurniawan, 2022) The position of the certificate in the legal realm can be identified into 2 components, namely the first is that the certificate is a legal form issued by an authorized official and has been adjusted with applicable laws and can be used as valid evidence by being considered a letter. Second, a certificate is evidence in the form of a letter that can stand alone, meaning that the certificate has strong legal force so that it does not only function as a tool Support or aid other evidence.

A certificate is a State Administration decision that is only allowed to be issued by state officials. The value of the validity of electronic certificates as evidence is explained in

Article 5 paragraph 1 and paragraph 2 of the ITE Law which reads that electronic evidence is also evidence which is valid and in accordance with applicable procedural law (Khasanah, 2021). Thus, the existence of electronic land certificates even though there is no physical or analog form, can still be used as legal evidence (Nurwiyanti, 2021). The article is the basis for using electronic land certificates as evidence. The position of electronic certificates in the judiciary is also regulated in Article 175 of the Job Creation Law, which states that decisions given in electronic form have the power Law that is commensurate with decisions that are handwritten and physical so that decisions (Tehupeiory, 2018) that already have digital form are no longer required to make copies in analog form.

The government has regulated this in Government Regulation Number 18 of 2021, which discusses Management Rights, Land Rights, Flats Units, and Land Registration. The PP is an extension of Article 142, Article 175, and Article 185 of the Job Creation Law. The PP also explains that printouts of data or other information generated from land registration are valid evidence in the eyes of the law. The data in question includes maps and lists of land parcels or buildings and the provision of evidence related to land parcels that have been registered. Ownership of land title marks at the same time states that all burdens and liabilities on the registered land are borne by the person whose name is listed as the owner of the land title.

The use of electronic certificates as evidence certainly also has provisions and provisions that must be obeyed. (Ramadhani, 2021) The requirement for the use of electronic certificates can be used as a means of evidence, the first is that the certificate can provide information on a disputed situation. The second requirement is that the electronic certificate is obtained from an information system whose implementation is guaranteed reliability and security. So, suppose there is an incident where evidence in the form of electronic certificates is accessed through a device that is not owned by the person concerned who is in dispute. In that case, such evidence is considered invalid. Although electronic certificates are considered valid as evidence, there are several differences between the provisions stipulated in the Basic Agrarian Law and the Land Registration Regulation with the provisions set by the PTUN. Therefore, if the use of land certificates is for the realm of law and dispute resolution, it is natural that the applicable provisions refer to provisions described by the PTUN. Based on the provisions of the PTUN, evidence in the form of electronic certificates is only declared valid if it is done by showing documents directly before the Judge. Namely by accessing the system directly when in front of a Judge. The rights holder himself must also do such access. Second, it can be done by printing documents from documents originating from the electronic system.

Law is one of the fields of social science, so it has a nature that tends to be flexible and dynamic. The law always applies according to the needs of society and in accordance with the times. This flexibility is intended to adjust to the needs of the community so that the community can obtain legal certainty. There are four discussions about legal certainty, namely:

1. Positive law (legislation)
2. Laws based on facts that occur
3. Formulation of clear facts to avoid errors in meaning
4. Positive law should not be changed too often.

Therefore, the meaning of legal certainty from the existence of electronic certificates for land rights holders must be based on analysis related to these 4 points. Legal certainty referring to the use of positive law can certainly be fulfilled with the existence of the Minister of ATR/BPN Number 1 of 2021 concerning Electronic Certificates. Legal certainty related to the basis of facts can be explained through electronic certificates as a



form of optimizing the use of information and communication technology, which is no longer inevitable at this time. The world has penetrated into the digital world, so the digitalization of legality is also increasingly needed. Transformation towards digital is considered something that has high urgency so that legal certainty can be found through the background of digitizing certificates. It is indeed a demand of the digital world. As for the formulation of facts that must be carried out clearly, it is known that the electronic certificate law already has parts that are in accordance with legal rules, so It can be stated that the formulation of these facts is clear and not multi-interpreted. The last point is that it is not allowed to make repeated changes in the near future. So far, since the regulation on land certificates was promulgated, there has been no discourse or plan to make a composition. So, this fourth point can also be fulfilled. In general, it can be concluded that there is legal certainty in the use of electronic land certificates.

#### **4. CONCLUSION**

A land certificate is a form of authentic evidence that a person or legal entity has power over the ownership of a piece of land in a particular location. So far, land certificates are owned by rights holders in the form of analog documents. In 2021, the Ministry of ATR/BPN released regulations related to the use of electronic certificates. The electronic land certificate is planned to replace the analog certificate that has been owned by the community. There are pros and cons related to the application of the electronic land certificate. The majority of people are still hesitant to access electronic land certificates. These doubts arise due to several factors such as understanding digital access and social factors. One of the factors that raises public doubts about the use of electronic land certificates is doubt about the position of electronic certificates in the eyes of the law and the level of legal certainty of ownership of the electronic certificate. However, based on the research results, it is known that electronic soil certificates have a position equivalent to analog certificates in Legal eyes and there have been legal certainty on the use of electronic land certificates.

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