

Withdrawal of Land Certificates and the Use of E-Certificate in the Indonesian Legal System of Land Registration

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ABSTRACT:

This paper seeks to identify the issue of withdrawing land certificates, changed with Electronic certificate, in the legal system for land registration in Indonesia. The results concluded that The Minister and officials in the Ministry of Agrarian Affairs and Spatial Planning/Head of National Land Agency (BPN) do not mention the certificate that exists with the Government Legal Entity, Private, Foreigners, religions, and communities will have their land certificate withdrawn. The certificate will be withdrawn if the certificate owner wants to change the certificate to an electronic certificate. There is also no coercion or obligation for the owner of to change it to an Electronic Certificate. The practical results emphasize that there is no legal certainty regarding the issue of revocation of land certificates.

KEYWORDS: Land Certificates, Land Registration, Legal System, Indonesia.

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I. INTRODUCTION

The birth of the Basic Agrarian Law No. 5 of 1960 concerning Basic Basic Agrarian Regulations removed some previous rights including, 1) *Eigendom* Rights or known as Right of Ownership; 2) *Erfpacht* Rights or known as Business Use Rights; 3) *Opstal* rights or known as Building Use Rights; 4) *Gebruik* Rights or known as Right of Use (Sihombing, 2015; Harahap & Minin, 2017; Supriyadi et al., 2018). Indonesia became independent in 1945 and only knew land rights since the birth of BAL No. 5 of 1960, namely ownership certificate, business use rights, building use rights, and use rights (Wicaksono et al., 2019; Richard et al., 2018). These rights were born based on the Regulation of the Minister of Agrarian Affairs No. 2 of 1960 concerning the Implementation of the provisions of BAL amended by Regulation of the Minister of Agriculture and Agrarian Affairs No. 2 of 1962 concerning the Explanation of Conversion and Registration of Former Indonesian Rights to Land (Sihombing, 2018).

The enactment of the Ministerial Regulation of Agrarian and Spatial Planning/Head of National Land Agency (BPN) No. 1 of 2021 dated January 12, 2021 concerning Electronic Certificates. This regulation became widely discussed because there was an issue or opinion that the Land Certificate would be withdrawn from all land certificate owners, private government legal entities, communities and others. Regulation of the Minister of Agrarian and Spatial Planning/Head of National Land Agency No. 1 of 2021 Regarding Electronic Certificate consists of 7 Chapters and 21 Articles. This regulation has only been established for 18 months, which is calculated from 16-5-2019 to 12-1-2021. This regulation describes the electronic system to Land Deed Making Officials (PPAT) through a Ministerial Regulation No. 1 of 2021 concerning Electronic Certificates. The question that then arises now is whether the electronic system in making the Deed of Transfer/Transfer of Rights can be implemented or implemented by all PPAT in Indonesia is it running smoothly.

The answer to the question is divided into two things. First, if indeed all PPAT already able to apply the Electronic System in making a Deed of Transfer/Transfer of Rights, it can be said that the Electronic Certificate System can be implemented. Second, if PPAT throughout Indonesia have not consistently implemented or implemented an electronic system of the Deed of Transfer/Transfer of Rights, so in the Electronic Certificate System should probably not have been created or implemented yet (Ramadhani & Abduh, 2021; Putra, 2020). The reason is because both land rights (land that already has a certificate), and land without rights (land that does not have a certificate), all processed by PPAT to make a Deed of Transfer/Transfer of Rights, such as Deed of Sale and Purchase, Grants, Exchanges, Deed of Relinquishment of Rights, and others (Saputri et al., 2020). With the existence of the Deed of Transfer/Transfer of Rights, then Government, Private, Community Legal Entities take care of certificates, and/or turn their names over to their own names. Hence when PPAT does not have a System of Deed of Transfer/Transfer of Rights to an Electronic Certificate system, then the Electronic Certificate cannot be issued. Therefore, it is necessary to have further research from the philosophy of science. Specifically, this study identifies whether the Regulation of the Minister of Agriculture

and Spatial Planning/Head of the National Agricultural Agency No. 1 of 2021 concerning Electronic Certificates regulates the Withdrawal of existing Land Certificates in Government, Private, Religious and Community Legal Entities.

II. LEGAL CONSIDERATIONS OF THE REGULATION OF ELECTRONIC CERTIFICATES

In legal considerations of Ministerial Regulation No 1 of 2021 of that in order to realize electronic-based land services as referred to realize the modernization of land services in order to improve the indicators of ease of doing business and public services to the community, it is necessary to optimize the use of information and communication technology by implementing electronic-based land services (Sekarmadji, 2021). The results of land registration activities shall be issued in the form of electronic documents, the results of land registration activities are issued in the form of Electronic Documents. In terms of the definition of Electronic Documents in Law No. 19 of 2016, in conjunction with the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of BPN No. 7 of 2019, and No. 1 of 2021 are the same, that electronic document is any electronic information that is created, forwarded, sent, received, or stored in analog, digital, electromagnetic, optical, or the like, which can be seen, displayed, and/or heard through a computer or electronic system, including without limitation. in writing, voice, pictures, maps, designs, photographs or the like, letters, signs, numbers, Access Codes, symbols or perforations which have meaning or meaning or can be understood by someone who is able to understand them.

Legally, electronic documents can be executed or implemented if they can be understood by those who are able to understand them. Therefore, so that there is no difference in interpretation, it is better if a linguist who gives an opinion whether the Electronic Certificate can be implemented or not. Likewise, it can be understood that the definition of an electronic certificate, hereinafter referred to as an electronic certificate, is a certificate issued through an electronic system in the form of an electronic document

This becomes odd or controversial because there is no regulation that says to delete or destroy and revoke the application of a certificate, so that the Electronic Certificate cannot be issued. This is expected to lead to multiple certificates. The people concerned should carry out land registration in a simple and easy-to-understand manner. It is rather difficult and controversial about Electronic Certificates, especially for people who do not understand computers and other electronic equipment (Riyadi & Atmoredjo, 2020).

III. ELECTRONIC CERTIFICATES AND ELECTRONIC INFORMATION AND TRANSACTIONS

Freedom to express thoughts and freedom of opinion as well as the right to obtain information through the use and utilization of Information and communication technology aimed at advancing public welfare and the intellectual life of the nation as well as providing a sense of security, justice and legal certainty for users and operators of electronic systems In the life of the community, nation and state, the rights and freedoms through the use and utilization of Information Technology are carried out by taking into account the restrictions established by law with the sole purpose of guaranteeing recognition and respect for the rights and freedoms of others and to fulfill just demands in accordance with considerations of moral, religious values, security and public order in a democratic society.

Law No. 11 of 2008 concerning Electronic Information and Transactions is the first law in the field of Information Technology and Electronic Transactions as a much needed legislation product and has become a pioneer that laid the basis for regulations in the sector of the use of Information Technology and Electronic Transactions. However, in reality, the implementation journey of the ITE Law has encountered problems. First, this Law has been proposed several times for judicial review at the Constitutional Court with Constitutional Court Decisions No. 50/PUU-VI/2008, No. 2/PUU-VII/2009, No. 5/PUUVIII/2010, and No. 20/PUU-XIV/2016. Based on the Decision of the Constitutional Court No. 50/PUU-VI/2008 and No. 2/PUU-VII/2009, criminal acts of defamation and defamation in the field of Electronic Information and Electronic Transactions are not merely general crimes, but as complaint offenses. The affirmation of the complaint offense is intended to be in line with the principles of legal certainty and a sense of public justice. Based on the Decision of the Constitutional Court No. 5/PUU-VIII/2010, the Constitutional Court is of the opinion that tapping activities and authorities are very sensitive matters because on the one hand it is a limitation of human rights, but on the other hand has aspects of legal interests. Therefore, regulations regarding the legality of wiretapping must be properly established and formulated in accordance with the 1945 Constitution of the Republic of Indonesia. In addition, the Court is of the opinion that because wiretapping is a violation of human rights as emphasized in Article 28J paragraph (2) of the 1945 Constitution of the Republic of Indonesia, it is very reasonable and appropriate that if the state wants to violate the privacy rights of these citizens, the state must deviate from it in the form of laws and not in the form of government regulations. In addition, based on the Decision of the Constitutional Court No. 20/PUU-XIV/2016, the Constitutional Court is of the opinion that in order to prevent different

interpretations of Article 5 paragraph (1) and paragraph (2) of the ITE Law, the Court emphasizes that every interception must be carried out legally, especially in the context of law enforcement. Therefore, the Court in its verdict adds a word or phrase "in particular" to the phrase "electronic Information and/or Electronic Documents". So that there is no interpretation that the decision will narrow the meaning or meaning contained in Article 5 paragraph (1) and paragraph (2) of the ITE Law, to provide legal certainty for the existence of Electronic Information and/or Electronic Documents as evidence, it is necessary to reaffirm in the explanation Article 5 of the ITE Law.

Second, the provisions regarding searches, seizures, arrests and detention stipulated in the ITE Law create problems for investigators because criminal acts in the field of Information Technology and Electronic Transactions are so fast and perpetrators can easily obscure acts or evidence of crimes. The principles and objectives of the Law on Information and Electronic Transactions are as follows: Use of Information Technology and Electronic Transactions is carried out based on the principles of legal certainty, benefits, prudence, good faith, and freedom to choose technology or technology neutrality. The use of Information Technology and Electronic Transactions is carried out based on the objective of:

- a. Educating the nation's life as part of the world's information society;
- b. Developing national trade and economy in order to improve people's welfare;
- c. Increasing the effectiveness and efficiency of public services;
- d. To open the widest possible opportunity for everyone to advance their thinking and abilities in the field of use and utilization of Information Technology optimally and responsibly; and
- e. Providing a sense of security, justice, and legal certainty for users and operators of Information Technology.

Likewise, in this Law the following definition also regulates: Electronic Information is one or a set of electronic data, including, but not limited to writing, sound, images, maps, designs, photos, electronic data interchange (EDI), electronic mail, telegram, telex, teletype or the like, processed letters, signs, numbers, access codes, symbols, or perforations which have meaning or can be understood by those who are able to understand them. Electronic Transactions are legal acts carried out using computers, computer networks, and/or other electronic media. Information technology is a technique for collecting, preparing, storing, processing, announcing, analyzing, and/or disseminating information.

Meanwhile, it turns out that only 65% of Indonesia's population has graduated from junior high school. Here, Head of the National Family Planning Population Agency (BKKBN), Hasto Wardoyo, said the quality of education in Indonesia has not been evenly distributed. The proof is the majority of Indonesia's population or 65% of them only graduate from Junior High/equivalent, while only 8.5% of the total population of Indonesia has a tertiary education or university education (Mufarida, 2021). In addition, Hasto said that if the intelligence level of Indonesian children was 72 out of 78 countries not only that, Hasto also revealed data that 54% of the workforce were formerly stunted. Hasto also explained that the world of education faces the challenges of change due to the development of information technology and must prepare human resources who are able to compete in facing global challenges, and then the implementation of the world of education with the needs of the world of work digitally must also be adjusted. Meanwhile, facing the industrial era 4.0, it is estimated that 75% of workers involve science and technology skills. Based on these matters, the general principles of good governance include: legal certainty, expediency, impartiality, accuracy, not misusing authority, openness, public interest, and good service.

This E-Certificate idea is a great one, as it reduces costs for printing blanks and removes red tape and saves service time. In Australia, the land registration system has been positive, where the rights are only divided into 2, among them is Freehold and Lease Rights (Wensing & Porter, 2016; Short, 2016; Alston et al., 2009). The truth is that the accuracy of ownership is 99% correct, the dispute there is only 1% and even then it only concerns land boundaries (Hanstad, 1997; Esposito, 2003). Therefore in a positive system it is guaranteed that if someone loses in court, the government will give G/R. Previously, the issuance of certificates in Indonesia through the prone map did not exist, the conversion of customary land was the same as well and others, Complete Systematic Land Registration (PTSL) should have been more careful with physical data and juridical data. If all of that is true, like E banking, there is no need for banknotes, and also stocks, there will be no more certificates like before but the data is secure: name, date of birth, id, password, numbers & letters, uppercase/mixed/lowercase letters.

In substance, this regulation consists of 7 chapters and 21 articles. This regulation is considered inconsistent with the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of BPN No. 7 of 2019 concerning the Second Amendment to the Regulation of the State Minister for Agrarian Affairs/Head of BPN No. 3 of 1997 concerning Provisions for Implementing Government Regulation No. 24 of 1997 concerning Land Registration. Regulation No. 7 of 2019 emphasizes on Land Deed Making Officials (PPAT) in the form of electronic documents, which are held in stages, and there is a new certificate amendment model in the

attachment to the regulation. After cleaning and clearing the electronic documents, the deeds made by PPAT just entered the electronic document of National Land Agency.

Legal considerations in this regulation state that in order to realize the modernization of land services in order to improve the indicators of ease of doing business and public services to the community, it is necessary to optimize the use of information and communication technology by implementing electronic-based land services; then the results of land registration activities are issued in the form of an electronic document. Thus the purpose of this regulation is made to increase the ease of doing business indicators.

Electronic Document is any Electronic Information that is created, forwarded, sent, received, or stored in analog, digital, electromagnetic, optical, or the like, which can be seen, displayed, and/or heard through a computer or electronic system, including but not limited to writing, sound, pictures, maps, designs, photographs or the like, letters, signs, numbers, Access Codes, symbols or perforations which have meaning or meaning or can be understood by those who are able to understand them. In the meantime, it is said in the definition of this electronic document which has meaning or meaning or can be understood by those who are able to understand it. A certificate is a proof of rights as referred to in Article 19 paragraph (2) letter c of the BAL for land rights, management rights, *waqf* land, property rights over apartment units and security rights, each of which has been recorded in a land book concerned. Electronic certificate, hereinafter referred to as e-certificate, is a certificate issued through an electronic system in the form of an electronic document.

IV. CONCLUSION

It is stated that there are two definitions of a certificate. First, it still recognizes the existence of the old certificate. Second, it recognizes the existence of an Electronic Certificate which means that there are still two models of Certificate Issuance. This is because there are no regulations that destroy the old certificate as in 1991. The results concluded that The Minister and officials in the Ministry of Agrarian Affairs and Spatial Planning/Head of BPN, do not mention the certificate that exists with the Government Legal Entity, Private, Foreigners, religions, and communities will have their land certificate withdrawn. The certificate will be withdrawn if the certificate owner wants to change the certificate to an electronic certificate. There is also no coercion or obligation for the owner of to change it to an Electronic Certificate. Furthermore, Regulation of the Minister of Agrarian and Spatial Planning/Head of BPN No. 1 of 2021 concerning Electronic Certificates, not a single article states that certificates owned by Government, Private, Foreign, Religious, and Community Legal Entities will be withdrawn from certificate owners. Unless the owners wish to replace it with an Electronic Certificate, the Land Certificate will be given or withdrawn by the local Land Office.

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