

Juridical Analysis of the Making of Business Rights Deeds in Electronic Forms

Nurul Islam Tajudin Putra ¹, Lalu Husni ¹, Muhaimin ¹

¹ *University of Mataram*

Jl. Majapahit No 62 Mataram, Nusa Tenggara Barat, Indonesia

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Corresponding Author:

Nurul Islam Tajudin Putra

hamidi@unram.ac.id

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Abstract. This study aimed to find out and analyse the arrangement of the usufructuary deed in the form of an electronic certificate, the procedures for making the usufructuary deed in the form of an electronic certificate, and the strength of the usufructuary certificate electronically. This research is normative legal research with a statute and conceptual approach. Based on the results of the study, First, the arrangement for the deed of usufructuary rights in the form of an electronic certificate is contained in Law No 11 of 2020 concerning Job Creation, PP No 1 Year 2021 concerning Management Rights, Land Rights, Flats Units, and Land Registration, Permen ATR/Head of BPN No 1 of 2021 concerning Registration of ATR/Head of BPN Certificates and Regulations No 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights. Second, the procedure for making a usufructuary deed as an electronic certificate starts from the file preparation, measurement, and submission stage to establishing management rights in the electronic certificate. Third, the legal power of the electronic usufructuary certificate includes the administration of Proof, certainty, and legal protection, which is recognised in the Job Creation Law, the ITE Law and contained in PP No 18 of 2021 and ATR/Head of BPN Regulation No 1 the Year 2021.

Keywords: Cultivation Rights; Electronic Certificates; Business Rights.

INTRODUCTION

The development of computer technology and communication technology has had a fundamental change in the movement of people's lives. This also has a widespread influence on procedures for implementing legal interest relationships. This condition was strengthened after the outbreak of COVID-19 in 2019, which forced individual, community, and administration relations to be based on the application of technology.

As an instrument of human life, law is required to respond with a progressive movement to deal with various situations in the development of society. One important and urgent thing is making a deed as the basis for the right to use electronic-based technology capabilities while still having the power and legal certainty.

Electronic contracts have developed in various areas, including in the public service system by the government. This can be seen with the government's innovations in public services and

administrative procedures, for example, electronic contracts in the procurement of goods/services in government projects.

Law No 11 of 2008 concerning Information and Transactions Electronics has regulated mechanisms for electronic signatures, where everyone can use the signed electronic signature (e-signature) supported by a service provider electronics certification.

The government has issued Government Regulation No 18 of 2021 concerning Management Rights, Land Rights, Flats Units, and Land Registration, which explains the provisions regarding Land Registration, which in this case are contained in Article 84 in the first point, which reads "the implementation and implementation of Land Registration can be electronic". Furthermore, the occurrence of usufructuary rights in Article 23 explains that:

1) The usufructuary rights on State Land are granted with the Minister's Decision to grant requests.

2) The usufructuary right over the Land of Management Right is granted with a decision to give the request by the Minister based on the approval of the holder of the Management Right.

3) The §§ 1, 2 decisions can be made electronically.

However, the Electronic Certificate program has loopholes for abuse of authority. Based on the description of the background of the problem above, the focus of the discussion in this study is: First, how do we arrange the deed of business use rights in the form of an electronic certificate? Second, what is the procedure for making a usufructuary deed as an electronic certificate? Third, how strong is the certificate of business use rights electronically?

METHOD

This type of research is normative research conducted on legal principles, legal principles in the sense of values (norms), concrete legal regulations, and the legal system, which are related to the material under study. Normative legal research is also called doctrinal [1]. In this type of research, the law is conceptualised as what is written in laws and regulations (law in books) or as rules or norms that are benchmarks for human behaviour that are considered appropriate [2].

The method used is the statute and conceptual approaches [2]. The types and sources of legal materials needed are primary, secondary, and tertiary. Primary Legal Materials include the 1945 Constitution of the Republic of Indonesia [3], the Basic Agrarian Law [4], the ITE Law [5, 6], Law No 11 of 2020 concerning Job Creation [7], Government Regulations [8–12] and the Book of Laws Civil. Secondary legal materials are obtained from official documents or data, textbooks, journals, research results, legal and scientific research reports, and tertiary legal materials, namely those that provide instructions and explanations of primary and secondary legal materials.

RESULTS AND DISCUSSION

Arrangement of Deed of Business Use Rights in the Form of Electronic Certificates. Registration ground has switched to function electronically. This method was carried out as a form of adjustment to the provisions for land registration in

PP No 24 of 1997 concerning Land Registration, which has been renewed through Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Flats Units, and Land Registration.

Regarding the electronic system in land documents, PP No 24 of 1997 concerning Land Registration has at least included provisions relating to storage. Article 35 § 5 states that land registration data is gradually stored and presented using electronic equipment and microfilm. Then, § 6 confirms that the recorded documents produced by electronic devices or microfilm, as referred to in § 5 have the power of Proof after being signed and stamped by the Head of the Land Office concerned.

There has been a Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency No 3 of 1997 concerning Provisions for the Implementation of Government Regulation No 24 of 1997 concerning Land Registration and amended by Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia concerning Amendment Second, on the Regulation of the State Minister for Agrarian Affairs/Head of the National Land Agency No 3 of 1997 concerning Provisions for the Implementation of Government Regulation No 24 of 1997 concerning Land Registration.

The introductory provisions on usufructuary rights in the Job Creation Law have changed Indonesia's scope of usufructuary rights. The implementing regulations for the Copyright Law then detail the arrangements in Law No 11 of 2020 concerning Job Creation as described in the previous chapter.

In addition to these provisions, the Job Creation Law also regulates the existence of electronic documents as in the requirements of the chapter on the implementation of government administration that the performance of government administration of Electronic Decisions is Decisions made or conveyed by using or utilising electronic media.

The provisions of Article 38 describe that Government Officials and/or Agencies can make Electronic Decisions. Electronic Decisions must be made or submitted to Decisions processed by an electronic system determined by the Central Government. If a decision is made in electronic form, no written determination is made.

PP No 18 of 2021 then regulates further descriptions, and Permen ATR No 18 of 2021 governs the mechanism from submission to issuance.

Then, explicitly, the provisions for electronic certificates have been regulated in the Regulation of the Minister of Agrarian Affairs/Head of BPN, starting from the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia concerning the Second Amendment to the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency No 3 of 1997 Concerning the Implementation Provisions for Government Regulation No 24 of 1997 concerning Land Registration, until finally the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No 1 of 2021 concerning Electronic Certificates.

Electronic Certificates Viewed from Legislation. Normatively, provisions regarding the use of electronic systems in the field of land management began to be contained in Government Regulation No 24 of 1997 concerning Land Registration and technical requirements in the Regulation of the State Minister for Agrarian Affairs/Head of the National Land Agency No 3 of 1997 concerning Provisions for Implementing Government Regulation No 24 of 1997 concerning Land Registration.

Explicitly, the provisions for electronic certificates have been regulated in the Regulation of the Minister of Agrarian Affairs/Head of BPN, starting from the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia concerning the Second Amendment to the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency No 3 of 1997 concerning Provisions Implementation of Government Regulation No 24 of 1997 concerning Land Registration, until finally the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No 1 of 2021 concerning Electronic Certificates.

ATR Candy No 1 of 2021 concerning Electronic Certificates states that electronic certificates are issued through the Electronic System as Electronic Documents. Furthermore, Article 2, namely:

- 1) Land registration can be carried out electronically;
- 2) The implementation of electronic land registration, as referred to in § 1, includes:
 - a. Land registration for the first time;
 - b. Maintenance of land registration data.
- 3) Land registration, as referred to in § 2, is carried out through an electro-system

In addition to sectoral provisions in agrarian or land affairs, in general, Law No 11 of 2008 concerning Electronic and Transaction Information (UU) relates to electronic certificates, namely that there is a provision: "Electronic Certificates are all forms of things that contain and are contained in an Electronic certification and strengthened by signatures in the electronic record, especially showing data and identity to the status of legal subjects for the parties in it which in this case is organised by the party authorised to carry out the implementation, namely parties or legal entities that are experts in validating and auditing Electronic certificate data.

Implementation of Electronic Land Registration Article 84 of Law No 11 of 2008 concerning Electronic and Transaction Information stipulates:

- 1) Implementation of land registration can be done electronically;
- 2) The results of the implementation and implementation of electronic Land Registration, as referred to in § 1, are in the form of data, electronic information, and/or electronic documents;
- 3) Electronic data and information and/or printouts are valid legal evidence;
- 4) Electronic data, information, and/or printouts, as referred to in § 3, are an extension of valid evidence by the procedural law in force in Indonesia;
- 5) The implementation of electronic Land Registration is carried out in stages by considering the readiness of the electronic system built by the Ministry.

Meanwhile, according to the Regulation of the Minister of Land, in this case regarding Certificates, namely the provisions of the Ministerial Decree of ATR/Head of BPN No 1 of 2021 concerning Land Registration, reads: "Documents in electronic form, commonly known as certificates, are then referred to as electronic certificates".

Implementation of Electronic Certificates according to Articles 13 and 14 of Law No 19 of 2016 concerning Electronic Transaction Information, namely:

- 1) Electronic Certification is applied to Electronic signatures and utilising the operator's services;
- 2) Electronic Certification must be the same as the Electronic signature according to the original owner;
- 3) Every party involved in the Electronic Certification program must be from within the country and foreign operators. Foreign operators must have experience and must be registered in Indonesia;
- 4) Government Regulations will become a reference in the process of implementing Land Registration.

Cultivation Rights in Ministerial Regulations and Arrangements for the Form of Electronic Certificates. Provisions for electronic systems, previously contained in Government Regulation No 24 of 1997 concerning Land Registration, but limited to storage. Regarding the electronic system in land documents, PP No 24 of 1997 at least included provisions relating to storage. Article 35, § 5 states that land registration data is gradually stored and presented using electronic equipment and microfilm. Then, § 6 confirms that the recorded documents produced by electronic devices or microfilm, as referred to in § 5, have the power of Proof after being signed and stamped by the Head of the Land Office concerned.

Provisions for electronic registration and electronic form documents were then developed in ministerial-level conditions. There was already a Regulation of the State Minister for Agrarian Affairs/Head of the National Land Agency No 3 of 1997 concerning Provisions for the Implementation of Government Regulation No 24 of 1997 concerning Land Registration and amended by Regulation of the Minister of Agrarian Affairs and Administration Space/Head of the National Land Agency of the Republic of Indonesia regarding the Second Amendment to the Regulation of the State Minister for Agrarian Affairs/Head of the National Land Agency No 3 of 1997 concerning Provisions for Implementing Government Regulation No 24 of 1997 concerning Land Registration, and finally, with the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency No 1 of 2021 concerning Electronic Certificates.

Referring to Minister of ATR/Head of BPN Regulation No 7 of 2016 concerning the Form and Content of Land Certificates regulates this. As stipulated in Article 2 it states, "Land registration is carried out using a land activity computerised system (KKP)". KKP uses an electronic system as a systemic, integrated application that can be used with or without a network and can be automatically synchronised.

ATR Candy No 1 Year 2021, regarding Electronic Certificates, further confirms that certificates of usufructuary rights for state land and management rights can be made electronically. The provisions of Article 2 state that:

- 1) Land registration can be carried out electronically;
- 2) The implementation of electronic land registration, as referred to in § 1 includes:
 - a. Land registration for the first time;
 - b. Maintenance of land registration data.
- 3) Land registration shall be carried out through an electronic system, as referred to in § 2.

Provisions of ATR Regulation No 1 Year 2021 regarding Electronic Certificates above emphasise electronic certificates, which describe the range of forms, administration, issuance for the first time and data Maintenance.

Brake. Article 3

- 1) The results of implementing electronic land registration are data, electronic information and/or electronic documents.
- 2) Electronic information and/or Electronic Documents, as referred to in § 1, are data of right holders, physical data and juridical data of valid land parcels and their authentication is maintained.
- 3) All Data, information and/or Electronic Documents are stored in the Electronic System Data Base.

Administration. Article 4

- 1) The operation of the Electronic System, as referred to in Article 2 § 3 is carried out reliably, safely and responsibly for the operation of the Electronic System.
- 2) The implementation of the Electronic System for the performance of land registration includes:
 - a. Data collection.

b. Data processing.

c. Data presentation.

3) The results of the implementation of the Electronic System, as referred to in § 2, are in the form of Electronic Documents, in the form of:

a. Electronic Documents issued through Electronic Systems and/or

b. Documents that are transferred from media to become Electronic Documents.

4) Electronic Documents issued through the Electronic System, as referred to in § 3 letter a, are legalised using Electronic Signatures by the provisions of the laws and regulations.

5) Electronic Documents resulting from media transfer, as referred to in § 3 letter b, are validated by the authorised official or appointed official and given a digital stamp through the Electronic System.

Publishing for the First Time. Article 6. The issuance of an e-certificate for the first time is carried out through:

a. First-time land registration for land that has not been registered;

b. Replacement of certificates with e-certificates for registered land

Data Maintenance. Article 17. The Electronic System carries out any changes to physical data and/or juridical data on land parcels issued e-certificates.

Based on the provisions of Permen ATR No 1 Year 2021 regarding Electronic Certificates, the use of electronic certificates in the land system is being strengthened again. The latest Permen ATR described above also describes the range of forms, administration, and issuance for the first time and data Maintenance.

In addition to the Minister of Environment regulations, electronic certificates are then found in the derivatives of the Job Creation Law, namely PP No 18 of 2021, concerning Management Rights, Land Rights, Flats Units and Land Registration, emphasising aspects of electronic certificates.

Based on the amended provisions in the Job Creation Law and PP No 18 of 2021, the primary form of usufructuary rights is a decision by a state administration official. This is based on the right to cultivate granted by the state as a form of land rights management. Decisions of state ad-

ministration officials no longer need to be strengthened by deeds because decisions have the same solid legal basis.

Cultivation rights in the form of electronic certificates in PP No 18 of 2021, as well as Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights, as mentioned above, have regulated recognition of the use of electronic systems. Submit applications for management rights or land rights as regulated in Article 23 and Article 24, then hold recommendations in electronic documents.

Article 24:

1) The application, referred to in Article 23, can be submitted through an electronic system provided by the Ministry.

2) If the application file is in the form of an electronic document issued by the competent authority, the electronic document can be accessed through an integrated electronic system.

Next, determining the right to manage cultivation rights is also regulated electronically. Article 35 states that submission of application documents to the Minister can be done through an electronic system provided by the Ministry. If the request is made through an electronic system, the application file for management rights is physically kept at the Land Office.

In addition, Article 57 regulates decisions on granting rights. In cases where decisions on granting property rights are the authority of the Head of the Regional Office, the Head of the Land Office submits the application file to the Head of the Regional Office. The Minister's source, namely the application file, is presented to the Minister by the Head of the Land Office, with a copy sent to the Head of the Regional Office. These provisions can be submitted through an electronic system provided by the Ministry, and the physical application files are kept at the Land Office.

Furthermore, the regulation of Article 68 relates to the Decision to grant Cultivation Rights, which is the authority of the Minister. The Head of the Regional Office submits the application file to the Minister. For submission of the application file, a cover letter is made by the Head of the Regional Office containing opinions, considerations and suggestions on whether or not the application can be granted. As mentioned above, submission

of application files can be done through an electronic system provided by the Ministry, and physical application files are still kept at the Regional Office.

The provisions above show that the arrangement of usufructuary rights in electronic form has been regulated in terms of filing up to the Decision on granting rights. However, the files in physical format must still be fulfilled to be stored at the regional office. Thus, legal certainty is the key to regulating usufructuary rights to provide clarity to the public.

Therefore, clarity is one of the contents of legal certainty, namely legal certainty by law and legal certainty in or from statute. Laws that guarantee a lot of legal confidence in society are helpful. Legal certainty is essential because the law gives another legal task, namely legal justice, and the law must still be beneficial. At the same time, legal confidence in the law is achieved if the law is as much as possible in the direction [13].

Procedure for Making a Deed of Cultivation Rights in the form of an Electronic Certificate. Land registration is a series of activities carried out by the government on an ongoing basis. Includes collection, processing, bookkeeping, and presentation and Maintenance of physical data and juridical data, in the form of maps and lists, up to issuing certificates of Proof of title for land parcels that already have rights.

The management of the electronic certificate of usufructuary rights shall pay attention to the Regulation of the Minister of Agrarian Affairs and Spatial Planning/ Head of the National Land Agency Republic of Indonesia No 18 of 2021 About Procedures for Determining Management Rights And Land Rights. For this reason, the submission to the issuance of a certificate refers to the provisions of Permen ATR No 1 of 2021 and ATR Regulation No 18 Year 2021.

Procedures for preparing, measuring and issuing usufructuary rights electronically can be described as follows.

Figure 1 shows the procedure for electronic certificates in general, namely starting from paying attention to land objects such as state land or land with management rights. Ministerial Decree determines state land, while Ministerial Decree issues land with management rights based on the approval of management rights holders. Based on the provisions, the right to cultivate is intended for agricultural, livestock and fishery/pond

business activities. In Permen ATR No 18 of 2022, the description of this activity is further expanded into several scopes.

Furthermore, it was also emphasised that certificates of usufructuary rights for state land and management rights can be made electronically.

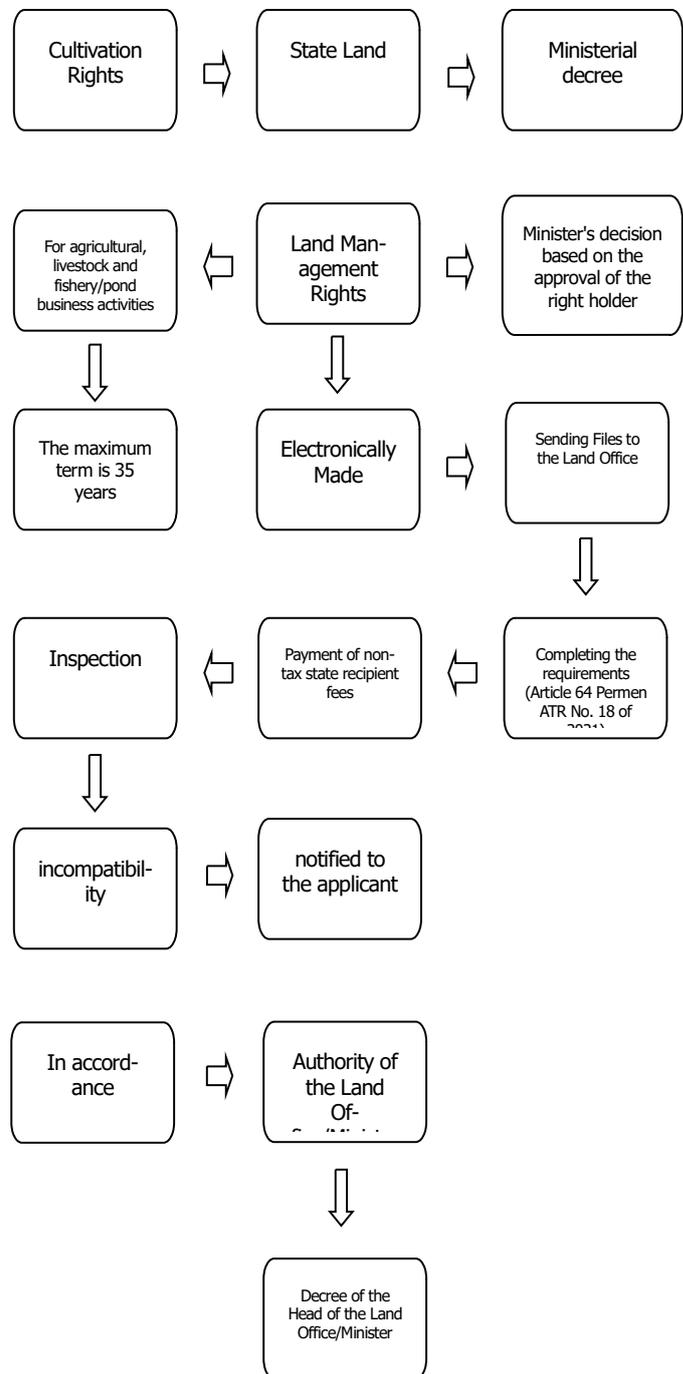


Figure 1 – Procedure for Issuing Electronic Certificates of Cultivation Rights

Further procedures are carried out at the Land Office by sending requirements paying non-tax state recipient fees. Then, the files are examined

and checked for suitability or non-compliance. If the files do not match, they will be returned or notified to the Applicant. Then, if the files are suitable, the authority of the Land Office or the Minister will be seen, and then a Decree of the Head of Office or Minister will be issued electronically. The essential vital provisions for each process can be described as follows.

Table 1 – Stages of Issuance of Cultivation Rights

| Stages and Description |
|--|
| General |
| Article 51. Granting of Land Rights Individually or Collectively includes: a. Right of ownership b. Cultivation Rights c. Building rights d. Usage rights have a period, and usage rights are as long as they are used. |
| Granting of Cultivation Rights |
| <i>Requirements for Application for Cultivation Rights</i> |
| Article 61. Cultivation Rights can be granted to: a. Indonesian citizens b. A legal entity established according to Indonesian law and domiciled in Indonesia. |
| Article 62 1) Cultivation rights are granted for agricultural, animal husbandry, and fishery/pond business activities. 2) Land use with Cultivation Rights for agricultural businesses, as referred to in § 1, includes plantation businesses, food crops and/or horticultural crops. 3) Food crop business activities referred to in § 2 for rice crops can only be carried out or granted in creating new rice fields. 4) As referred to in § 3, new rice fields are printed on less or unproductive land to become productive rice fields. 5) Land with Cultivation Rights can be used for emplacements, factory buildings, warehouses, temporary residences for employees and other facilities that support business activities. 6) Land used to support business activities, as referred to in §5, may be granted rights according to its nature and function. 7) In the event that there is a change in the use of commodities, this can only be done after obtaining permission from the relevant agency and the holder of the Cultivation Right to report to the Head of the Land Office. |
| Article 63. Cultivation Rights are granted for a maximum period of 35 years, extended for a maximum of 25 years and renewed for a maximum of 35 years. |

| Stages and Description |
|---|
| Article 64 1) Requirements for application for Cultivation Rights originating from State Land include: a. Regarding the Petitioner: 1) The identity of the Petitioner, or the identity of the Petitioner and his attorney and power of attorney if authorised; 2) Deed of establishment and the latest amendments along with approval from the competent authority or company establishment regulations, Business Identification Number from Online Single Submission (OSS) or Company Registration Certificate (TDP), if the Applicant is a legal entity. b. Regarding the land: 1. The basis of control or the basis of the rights include: a. certificate, deed of transfer of title, deed/Proof of relinquishment of rights, Decision to relinquish forest area from the competent authority, minutes of auction, court decision or other evidence of land acquisition; b. if there is no evidence of land ownership as referred to in letter a), then physical ownership of the land shall be contained in a statement of physical ownership of the land parcel witnessed by at least 2 witnesses from the local environment who know the history of the land and have no family ties also known by the head of the local village or another name similar to that. 2. List and map of land acquisition if the application is for more than five areas. 3. Land Sector Map. c. Permit documents in the form of: 1. KKPR; 2. Business license related to its business activities. a. Land allotment, use and utilisation planning documents; b. Proof of implementation of the obligation to facilitate the development of community plantations for plantation companies; c. Proof of taxation relating to the land requested, if any; d. A statement of physical ownership of the land parcel for an individual Applicant or in the form of a notarial deed for an Applicant with a legal entity and is responsible both civilly and criminally stating that: 1. The land is actually owned by the person concerned, not owned by another person, and its status is State Land; 2. The land has been physically controlled; 3. Land tenure is carried out in good faith and openly by the person concerned as the owner of the land; |

| Stages and Description |
|--|
| <p>4. Land acquisition is made according to the actual data and if it turns out that in the future, it will be the full responsibility of the Applicant and will not involve the Ministry;</p> <p>5. There is no objection from other parties regarding the land owned or not in a state of dispute;</p> <p>6. There is no objection from the creditor if land is used as collateral for a debt;</p> <p>7. The land is not an asset of the Central Government/Regional Government or BUMN/BUMD asset;</p> <p>8. The land being applied for is located outside the forest area and/or outside the region whose license has been terminated in primary natural forest and peatland;</p> <p>9. The land being laid for does not overlap with the business license related to the utilisation of natural resources;</p> <p>10. The land being used is not productive food agriculture land for the application for Cultivation Rights in the framework of creating new rice fields;</p> <p>11. The ability to carry out CSR if the Applicant is a legal entity;</p> <p>12. The ability to facilitate the development of community gardens for plantation companies;</p> <p>13. Willing not to confine/close yards or other plots of land from public traffic, public access and/or waterways;</p> <p>14. Ready to relinquish the land for the public interest either in part or in whole;</p> <p>15. Willing to manage, maintain and supervise and maintain the function of a high conservation value conservation area, the operation of conserving the boundaries of water bodies or other conservation functions;</p> <p>16. Willing to take preventive measures, including the implementation of an early fire suppression crisis management centre if the Applicant is a legal entity; and</p> <p>17. Are eager not to cultivate the land by burning;</p> <p>e. Beneficiary Owner Statement is for companies that must report the beneficial owner as stipulated in the provisions of laws and regulations.</p> <p>2) Requirements for application for Cultivation Rights originating from Land Management Rights include:</p> <p>a. Regarding the Petitioner:</p> <p>1. The identity of the Petitioner, or the identity of the Petitioner and his attorney and power of attorney if authorised</p> <p>2. Deed of establishment and the latest amendments along with approval from the competent authority or company establishment</p> |

| Stages and Description |
|--|
| <p>regulations, Business Identification Number from Online Single Submission (OSS) or Company Registration Certificate (TDP), if the Applicant is a legal entity;</p> <p>b. Regarding the land in the form of:</p> <p>1) The land use agreement, which contains the obligations of the holder of Cultivation Rights includes:</p> <p>a. The ability to carry out CSR if the Applicant is a legal entity;</p> <p>b. The ability to facilitate the development of community gardens for plantation companies;</p> <p>c. Willing not to confine/close yards or other plots of land from public traffic, public access and/or waterways;</p> <p>d. Willing to manage, maintain and supervise and maintain the function of a high conservation value conservation area, the process of conserving the boundaries of water bodies or other conservation functions;</p> <p>e. Willing to take preventive measures, including the implementation of an early fire suppression crisis management centre if the Applicant is a legal entity and</p> <p>f. are eager not to cultivate the land by burning;</p> <p>2. Land Sector Map;</p> <p>c. Licensing documents in the form of business licenses related to their business activities;</p> <p>d. Proof of implementation of the obligation to facilitate the development of community plantations for plantation companies;</p> <p>e. Proof of taxation relating to the land requested, if any;</p> <p>f. Beneficiary Owner Statement is for companies that must report the beneficial owner as stipulated in the provisions of laws and regulations.</p> |
| <p>Procedures for Granting Cultivation Rights</p> |
| <p>Article 65</p> <p>1) After the complete application is received and the Petitioner has paid the non-tax state revenue fee referred to in Article 27, Committee B will conduct a land inspection.</p> <p>2) In the event that based on the results of the land inspection, as referred to in § 1, there is still a discrepancy between the Physical Data and Juridical Data, the Applicant shall be notified.</p> |
| <p>Article 66</p> <p>1) If the Decision to grant Cultivation Rights is the authority of the Head of the Land Office after the land inspection activities are carried out, the Head of Section prepares the concept:</p> <p>a. Decision to grant Cultivation Rights over the requested land;</p> <p>b. Decision to reject the application for Cultivation Rights, accompanied by the reasons for the rejection, if the application is denied.</p> |

| Stages and Description |
|--|
| <p>2) The Head of the Land Office issues a decision to grant a Cultivation Right or reject an application for a Cultivation Right based on the requirements documents submitted, the considerations of Committee B and the concerns of the Section Head.</p> <p>2) The granting of usufructuary rights, as referred to in § 2 shall take effect from when the Land Office registers the rights.</p> |
| <p>Article 67</p> <p>1) If the Decision to grant Cultivation Rights is the authority of the Head of the Regional Office after the land inspection activities are carried out, the Head of Field prepares the concept:</p> <p>a. Decision to grant Cultivation Rights over the requested land;</p> <p>b. Decision to reject the application for Cultivation Rights, accompanied by the reasons for the rejection, if the application is denied.</p> <p>2) The Head of the Regional Office issues a decision to grant a Cultivation Right or reject an application for a Cultivation Right based on the requirements documents submitted and considerations from Committee B and the Head of Division.</p> |
| <p>Article 68</p> <p>1) If the Decision to grant cultivation rights is the authority of the Minister, the Head of the Regional Office shall submit the application file to the Minister.</p> <p>2) For submission of the application documents, as referred to in § 1, a cover letter is made for the Head of the Regional Office containing opinions, considerations and suggestions on whether or not the application can be granted.</p> <p>3) Submission of application documents, as referred to in § 1 can be done through an electronic system provided by the Ministry.</p> <p>4) In the event that the submission is made through the electronic system, as referred to in § 3, the application files are physically kept at the Regional Office.</p> |
| <p>Article 69</p> <p>1) Suppose the Decision to grant the Cultivation Right is the authority of the Minister, as referred to in Article 68 § 1. In that case, the Director General examines and reviews the completeness and correctness of the application's Physical Data and Juridical Data.</p> <p>2) If, based on the results of the examination, research and assessment as referred to in § 1, there are still discrepancies in the Physical Data and Juridism Data, the Applicant will be notified through the Regional Office</p> <p>3) After carrying out inspections, research and assessments of the completeness and correctness of Physical Data and Juridical Data</p> |

| Stages and Description |
|--|
| <p>as referred to in § 1, the Director General prepares a draft:</p> <p>a. The Decision to grant Cultivation Rights over the requested land or</p> <p>b. The reasons for the rejection accompany the Decision to reject the application for Cultivation Rights if the application is denied.</p> <p>4) The Minister issues a decision on granting business use rights or rejecting an application for usufructuary requests based on the requirements documents submitted and considerations from Committee B, the Head of the Regional Office and the Director General.</p> <p>5) As referred to in § 4, granting usufructuary rights shall take effect from the time the Land Office registers the rights.</p> |

Strength of Cultivation Right Certificate Based on PP No 18 of 2021 and ATR Regulation No 18 Year 2021. PP No 24 of 1997 has regulations related to electronic systems but are limited to storage only. PP No 24 of 1997 includes provisions relating to storage. Namely, Article 35, § 5 states that land registration data is stored and presented using electronic equipment and microfilm. Then, § 6 confirms that the recorded documents produced by electronic devices or microfilm, as referred to in § 5, have the power of Proof after being signed and stamped by the Head of the Land Office concerned.

Based on the provisions of PP No 18 of 2021 and ATR Regulation No 18 of 2021, then regulates submission by electronic system until its issuance. The provisions of PP No 18 of 2021 Article 10 concerning management rights state that a Ministerial Decree stipulates management rights originating from State Land or Ulayat Land. Such decisions can be made electronically. However, the registration process is accompanied by physical documents until the issuance of an electronic certificate. This means that the requesting party must still fulfil the aspects of the physical document requirements in the series of stages to the distribution of electronic records. This can be seen from the provisions in Permen No 18 of 2021, as described in the previous chapter.

Furthermore, PP No 18 of 2021 states that to prove in court and/or provide land information requested by agencies that need it for carrying out their duties, data and/or documents can be given access through an electronic system. This is regulated in Article 85, stating:

- 1) All data or documents in the framework of land registration activities are gradually stored and presented as electronic documents by utilizing information and communication technology.
- 2) Data and/or documents, as referred to in § 1 are stored electronically in the Ministry database.
- 3) To prove in court and/or provide land information requested by agencies that need it to carry out their duties, data and/or documents as referred to in § 2 may be granted access through an electronic system.

In addition, the Job Creation Law emphasises in the chapter on Government Administration, in Article 38, that Powerful Electronic Form Decisions, the law is the same as a written decision and practical from the receipt of the determination by the party concerned.

Furthermore, Article 147 of the Job Creation Law states, "Proof of land rights, ownership rights to apartment units, management rights, and mortgage rights, including deed of transfer of land rights and other documents related to land can be in electronic form".

Based on the provisions of the ITE Law in Article 5 § 4, electronic documents do not meet the requirements for document authenticity as stipulated in Article 1868 of the Civil Code. From this provision, the legal force of Proof of electronic certificates stored electronically or in electronic form in evidence in civil procedural law can only function as a backup and not as a copy with binding force.

The use and recognition of electronic documents as evidence also need to be reviewed based on the Company Documents Law, which states that company documents consisting of records, bookkeeping evidence, and financial administration supporting data as referred to in this law, whether made in written form on paper or other means or recorded in any format that can be seen, read or heard, can be used as evidence. Documents stored in electronic form can be used as legal evidence in court if a dispute occurs in the future [14].

In theory, electronic certificates are part of legal protection and guarantee legal certainty. The storage of protocols is intended to ensure the truth of facts so that evidence can be used.

There are two kinds of proof systems, namely, the formal proof system and the material proof system. The civil procedural law in Indonesia ad-

heres to a legal evidence system based on proper evidence submitted by the parties to the dispute in court and only seeks formal truth. Formal truth is based on what the parties state or postulate before the court, so the judge is not able to determine legal validity but is bound by what the parties say.

Formal electronic evidence in the provisions of civil procedures is not yet strong. It will be difficult for judges to resolve and decide on disputes if the parties submit electronic documents as evidence because, until now, there has been no precise regulation regarding the strength of making equivalent electronic evidence with an Authentic deed. This cannot be used as an excuse by the judge not to accept, examine and decide on cases submitted to him, even if the law is unclear or there is no regulation.

The principles contained in Article 10 of Law No 48 of 2009 concerning Judicial Power state that a judge may not refuse to examine and decide on a case submitted to him even if the legal pretext is unclear or does not exist. Therefore, the judge must still accept to explore and decide on a matter submitted to him despite no law, so the judge must make legal discoveries. In other words, the strength of electronic evidence as a guide is highly dependent on the judge's conviction as a case breaker [15].

The digitisation of deeds and certificates also aims to maintain archives so that they remain dynamic and are intended to maintain the security, safety and integrity of these archives. More than that, information that is spoken, sent, received, or stored electronically with optical devices or something similar is an extension of the provisions regarding the source of obtaining evidence.

Several regulations that support the implementation of the transfer of notary protocols in electronic form in Indonesia as also described above, namely: a) Articles 5 and 6 of the Information and Technology Law, which recognise electronic documents as legal evidence; the Job Creation Law; d) PP No 18 of 2021; d) ATR Regulation No 1 the Year 2021; e) ATR Regulation No 18 the Year 2021.

The strengthening of these rules will provide legal protection to the community. Legal protection is always related to the role and function of law as a regulator and safety of the public interest. In his book "Crime and Custom In Savege", Broin

Malinowski says that the law plays a role in violence, conflict, and daily activities [16].

The aspect of protection in the strength of Proof of electronic certificates can also be related to the opinion. According to Philipus M. Hadjon, regulations provide legal protection for dignity and recognition of human rights owned by legal subjects. It prevents arbitrariness in the application of law [16]. In addition, according to what Philipus M. Hadjon said, the Proof of electronic certificates has aspects of preventive legal protection, which aims to prevent problems or disputes. Then, the repressive legal defence seeks to resolve issues or conflicts that arise [16].

The problem of law enforcement is aimed at ensuring compliance with applicable legal provisions, and concrete law enforcement is applying positive law in practice as it should be obeyed. For this reason, the existence of positive law includes avoiding arbitrariness as part of legal protection.

The application of law can guarantee the fulfilment of legal protection through the existence of legal force. Based on research results, the power of law is to fulfil the aspect of Proof. The Job Creation Law's provisions are a positive law that lists the strength of the electronic certificate document as evidence, stating that the Decision Powerful Electronic Form is the same as a written decision and practical from the receipt of the judgment by the party concerned.

In addition, there are provisions in the ITE Law which generally recognise electronic documents and implement requirements for government and ministerial regulations as described in the previous chapter. This regulation is a form of legal protection for the community, guaranteeing the strength and certainty of law.

Then, aspects of electronic certificates in preventive legal protection aim to prevent problems or disputes. From this, provisions in positive law prevent legal certainty conflicts because it is vulnerable to cause problems. The conditions emphasised in the Job Creation Law and technical requirements in government regulations and ministerial regulations related to procedures and procedures avoid disputes because electronic certificates provide signs up to their issuance. If there is a dispute, then the administrative process that has been determined can be observed so that there are indicators of clarity and errors and mistakes can be detected.

In this case, it can be interpreted that the existence of provisions can determine the settlement taken. In the event of an error or process error, room for payment can be given administratively, relating to conditions and testing the Decision of an authorised official where there is a possibility of abuse of authority or maladministration. Conversely, it can also be identified if there are civil problems or violations of criminal provisions. From this legal protection, the existence of normative conditions can be an indicator in the application of law so that there is no arbitrariness, preventing disputes from occurring and as a basis for aspects of dispute resolution if something goes wrong.

CONCLUSIONS

Arrangement of the deed of usufructuary rights in the form of an electronic certificate is contained in Law No 11 of 2020 concerning Job Creation, PP No 1 Year 2021 concerning Management Rights, Land Rights, Flats Units, and Land Registration, Permen ATR/Head of BPN No 1 of 2021 concerning Registration of ATR/Head of BPN Certificates and Regulations No 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights. The Job Creation Law confirms that Officials and/or Government Agencies can make Decisions in Electronic Form, and Proof of land rights and other documents related to land can be in electronic form. PP No 1 of 2021 states that management rights, including through usufructuary requests and decisions can be made electronically. Permen ATR/Head of BPN No 1 of 2021 states that land registration can be carried out electronically. Permen ATR/Head of BPN No 18 of 2021 states that submitting applications and files and issuing management rights can be done through an electronic system provided by the Ministry.

The procedure for making a usufructuary deed as an electronic certificate is based on Permen ATR/Head of BPN No 1 of 2021 and ATR/Head of BPN Regulation No 18 of 2021. ATR/Head of BPN Regulation No 1 of 2021 regulates the introductory provisions and range of electronic certificates while it relates to the procedures for following Permen ATR/Head of BPN No 18 of 2021, starting from the stages of file preparation, measurement, submission to the establishment of management rights in electronic certificates.

The legal strength of the electronic usufructuary certificate includes the power of Proof, certainty and legal protection, which are recognised in the Job Creation Law, the ITE Law and contained in PP No 18 Year 2021 regarding Management Rights, Land Rights, Flats Units, and Land Registration, and Permen ATR/Head of BPN No 1 of 2021 concerning Electronic Certificates. The Job Creation Law states that decisions in electronic form have power. The law is the same as a written decision and practical from the receipt of the Decision by the party concerned. The ITE Law stipulates that it must be supplemented with

other supporting documents or function as a backup, not a copy with binding legal force. PP No 18 of 2021 states that to prove in court and/or provide land information requested by agencies that need it for carrying out their duties, data and/or documents can be given access through an electronic system. ATR Candy No 1 of 2021, concerning Electronic Certificates, has also confirmed the strength of Proof of electronic certificate rights, namely valid legal evidence and an extension of legal evidence by the applicable procedural law in Indonesia.

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