

Juridical Analysis of Electronic-Based Use Rights Certificates: Study at Mataram City National Land Agency Office, Indonesia

Widya Istiqomah ¹, Muhammad Sood ¹, Muh. Risnain ¹

¹ *University of Mataram*

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

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Corresponding Author:

Widya Istiqomah

widyaistiqomah5@gmail.com

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Abstract. This research aims to determine the arrangements and mechanisms for registering electronic-based certificates of use and the strength of electronic-based certificates of use as proof of control of land rights. The type of research used is normative and empirical, using statutory, conceptual and sociological approaches. The source of legal materials used is secondary data, which consists of primary, secondary, and tertiary legal materials and primary data. The analysis used is using interpretation. Based on the research results, it is known that the regulation of electronic use proper certificate registration has been recognised in various laws and regulations, especially in the ATR/BPN Ministerial Regulation No 3 of 2023 and the mechanism registration of electronic use proper certificates regulated in Article 7 to Article 21. The legal force of an electronic use adequate certificate can be used as legal evidence by Article 147 of Law Number 6 of 2023, where the binding force of an electronic certificate is an electronic signature by Article 11 Law No 19 of 2016.

Keywords: Electronic Use Rights Certificate; Land Rights; Land Registration.

INTRODUCTION

The land is a gift from God Almighty, and based on the State's right to control, it is an obligation for the government to carry out land registration throughout the territory of the Republic of Indonesia. Based on Law No 5 of 1960 concerning Basic Regulations on Agrarian Principles (from now on referred to as UUPA), which adheres to individualistic communalistic religious principles, the State aims to protect land and also regulate legal relations over land rights through the delivery of certificates as proof of land rights for the holder [1].

Land rights are the right to control land, which contains a series of authorities, obligations and/or prohibitions for the right holder to do something regarding the land they own. Something permissible, obligatory or prohibited to do, which constitutes the content of tenure rights, is the criterion or distinction between tenure rights over land regulated in land law [2].

Land rights give the right holders the authority to use and take advantage of the land they own. The word "use" implies that land rights are used for

building buildings, while the words "take advantage" imply that land rights are not used for building buildings but for agricultural, fishing, animal husbandry, and plantation activities [3].

The UUPA regulates land rights, one of which is regarding Use Rights. Based on Article 41 § 1 UUPA State Gazette of the Republic of Indonesia of 1960 No 104, Supplement to State Gazette No 2043 states: "Use right is the right to use and/or collect the proceeds from land controlled directly by the State or land belonging to another person, which gives authority and obligations specified in the decision to grant it by the official authorised to grant it or in an agreement with the land owner, which is not an agreement leases or land management agreements, as long as they do not conflict with the spirit and provisions of this Law".

Then, based on Article 54 § 1 of Government Regulation No 18 of 2021 concerning Management Rights, Land Rights, Flats and Land Registration, it is stated that the grant of use rights must be registered at the National Land Agency Office to obtain a certificate which is a guarantee of legal certainty of ownership land

rights. The mechanism for obtaining a land title certificate is regulated through Government Regulation 24 of 1997 concerning Land Registration.

Article 53 of Government Regulation No 18 of 2021 concerning Management Rights, Land Rights, Flat Units and Land Registration, § 4 states that granting usage rights can be created electronically.

In implementing agrarian reform, bureaucratic reform and ease of business, the government issues land title certificates electronically. This policy of replacing analogue certificates with electronic ones will make it easier for people to keep certificates from the threat of damage, house flooding, loss or misuse due to changing hands. However, it cannot be denied that there are several drawbacks, namely that electronic land certificates are very vulnerable and easily hacked by hackers because electronic systems in government agencies have low security. This is proven by the case that shocked the public, namely the one billion Simcard data breach by hackers who called themselves Bjorka.

Another technical area for improvement of this electronic land certificate is that people's digital literacy still needs to improve. It cannot be denied that not all Indonesian people understand technology. This will become a severe problem if electronic land certificates are implemented. The development of facilities and infrastructure, such as internet networks and devices, is also unevenly distributed throughout the territory of the Republic of Indonesia. For people who live in urban areas, internet networks are not an obstacle. However, internet networks are a big PR problem for people who live in regional areas. Not to mention, groups of people cannot access technology.

The issuance of electronic certificates is also regulated in Law No 30 of 2014 concerning Government Administration. This is because issuing electronic certificates is part of administering government on an e-government basis. The electronic land certificate program in Indonesia is not easy to implement because Indonesia's territory is so large that the change process will take a very long time. From a priority perspective, this step is considered optional. Minister of ATR/BPN Hadi Tjahjanto, in a Working Meeting with Commission II DPR RI said that as many as 67.5% or 85 million plots of land throughout Indonesia had been certified so

that by 2022 the Ministry of ATR/BPN had registered 101.1 million plots of land or 80.25 % nationally (Ade Miranti Karunia, 2023).

This data proves that various government programs for accelerating national land registration have produced results through sporadic land registration and the Complete Systematic Land Registration (PTSL) program. However, land title certificates, which are the result of various government programs, cannot be denied. However, they still leave gaps in guaranteeing legal certainty, which can potentially harm the community. The experience with E-KTP has, up to now, been a reference to public distrust in the government's ability to build a reliable and secure electronic land certificate system. Public fear and suspicion regarding this electronic certificate program are very high. Socialisation is needed from the government and BPNs to educate them about the purpose and security of issuing electronic certificates.

The community is most vulnerable to being harmed by digitalisation because many land title certificates owned by business entities are on land in areas of conflict with the community. The government must also be stricter in issuing electronic land certificates to carry out the validation process. The government must be able to guarantee the validity and authentication of data on people who apply for land certificate ownership. This applies to the issuance of new certificates as well as changing land certificates from paper to electronic. It is not easy for the government to guarantee the data submitted by the community to obtain a land certificate. Usually, BPNs accept public data because Indonesia's land registration system is a harmful publication. This is different from countries that use a positive registration system. The registrant may be someone other than the landowner who needs better faith. That way, the actual landowner will be harmed. What is essential in this case is whether the certificate holder is a data holder who has the right and is protected by law. From a legal perspective, the problem is whether this electronic land certificate has the same legal force as a conventional (physical) certificate, namely as proof of land rights.

Based on the background described above, the problem formulation in this research is how to regulate and mechanism electronic-based registration of right-of-use certificates at the

Mataram City National Land Agency Office and what the power of the law electronic-based certificate of right to use as proof of control of land rights is.

METHOD

The type of research used is normative and empirical legal research. Study Normative law focuses on analysing the legal aspects of a problem, which involves studying primary and secondary legal materials linked to the issue being discussed. Empirical legal research studies apply laws and regulations using concepts and legal theory as a basis, but they focus on directly observing reality on the ground [4].

The problems in this research are examined using the statutory approach. This approach involves activities that examine statutory regulations, principles, and legal norms in society originating from laws, books, documents, and other sources. The conceptual approach examines the views/concepts of experts regarding the problem being discussed. The sociological approach deepens the discussion and completeness of the data in this research, so apart from research carried out normatively, empirical research will also be carried out.

The legal material collection techniques used were literature study and interviews. Literature study involves recording information from legal materials related to what will be researched, both normatively and in the form of ideas or concepts. An interview is a role-playing situation between individuals in which the interviewer asks questions to obtain relevant answers.

Secondary and primary legal materials will be processed with analysis based on the formulation of the problem being studied to obtain a clear general picture. The legal materials are analysed quantitatively and then descriptively. All legal materials that have been collected are then selected and processed, then reviewed and analysed according to the legal issues faced to conclude. From the results of the descriptive analysis, the author will be able to draw conclusions based on deductive thinking.

RESULTS AND DISCUSSION

Arrangements and Mechanisms for Electronic-Based Use Rights Certificate Registration (Study at the Mataram City National Land Agency Office)

Electronic-based use rights certificates as proof of land control in the land system in Indonesia are regulated in several regulations, namely:

Law No 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA). One of the objectives of the UUPA is to lay the foundations for providing certainty of land rights for the entire people. Efforts towards legal certainty and certainty of land rights require land registration in the form of cadastral rights, meaning that it aims to guarantee legal certainty by providing certainty of rights to the relevant rights holders.

By its aim, namely, to provide legal certainty, land registration is not only the government's obligation but also the rights holders' obligation because it is a big job that requires many experts, equipment, and high costs. If land registration is optional for the holders of the land rights in question, then what is expected from land registration will have little meaning.

Law No 11 of 2008 concerning Electronic Transaction Information. Based on Law No 11 of 2008 concerning the ITE Law concerning the Implementation of Electronic Systems and Transactions (PSTE) Article 1 No 4 Electronic Documents are: "Any Electronic Information that is created, forwarded, sent, received, or stored in analogue, digital, electromagnetic, optical, or similar form, which can be seen, displayed, and/or heard via a computer or electronic system, including but not limited to writing, sounds, images, maps, plans, photographs or the like, letters, signs, Nos, Access Codes, symbols or perforations that have meaning or significance or can be understood by people who are capable of understanding them".

An Electronic Certificate is an electronic certificate containing an Electronic Signature and identity indicating the legal subject status of the parties in an Electronic Transaction issued by an Electronic Certification Provider (PSrE). Regarding Electronic Certificates, it is also explained in Law No 11 of 2008 concerning Electronic Information and Transactions (ITE) in Article 5 § 2 that they are valid proof of ownership based on valid procedural legal provisions in Indonesia. So, based on statutory regulations, electronic certificates are included in authentic deeds, even in electronic form.

Law No 30 of 2014 concerning Government Administration. Implementing electronic land certificates is an effort by the Ministry of ATR/BPN to continue the principles of e-government after previously implementing Electronic Mortgage Rights services. Law No 30 of 2014 is the legal basis for e-government, where Article 38 § 1 states that officials and/or Government Bodies can make decisions electronically.

The implementation of e-government involves utilising technology and communication to serve the public and partners of the Ministry of ATR/BPN through electronic services. Technology and information will make it easier for the public and partners of the Ministry of ATR/BPN to receive services without direct face-to-face contact.

Government Regulation No 24 of 1997 concerning Land Registration. Based on Government Regulation No 24 of 1997 concerning Land Registration, Article 3 explains the purpose of land registration in detail:

- 1) Whereas to make it easier to prove oneself as the holder of rights to a plot of land, flat and others so that the rights holder is ensured and protected by law;
- 2) That is to make it easier for interested parties, such as the government, to obtain information in carrying out legal actions regarding rights that have been registered. Such as plots of land and/or flats;
- 3) It is carried out within the framework of government administration.

According to the author, Land Rights Registration aims to obtain a certificate, the most substantial evidence of ownership of land rights. So, legal certainty is guaranteed through ownership of a land certificate issued by BPN.

Government Regulation No 18 of 2021 concerning Management Rights, Land Rights, Flats and Land Registration. Article 1 § 9 of the Republic of Indonesia Government Regulation No 18 of 2021 concerning Management Rights, Land Rights, Flats and Land Registration reads: "Land Registration is a series of activities carried out by the Government continuously, sustainably and regularly, including the collection, processing, bookkeeping, and presentation and maintenance of physical data and juridical data, in the form of maps and lists, regarding plots of land, above-

ground space, Basements and apartment units, including the provision of letters of proof of title to parcels of land, above-ground spaces, basements for which there are already existing rights and ownership rights to apartment units as well as certain rights that encumber them."

Land registration can be organised and implemented electronically. The implementation of electronic land registration is carried out in stages, considering the readiness of the electronic system built by the ministry. The results of electronic land registration are in the form of data, electronic information, and electronic documents, the printed results of which can be used as valid legal evidence.

Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No 3 of 2023 concerning Issuance of Electronic Documents in Land Registration Activities. Regulations regarding Electronic Use Rights Certificate Registration are regulated in the Regulation of the Minister of Agrarian and Spatial Planning/National Land Agency No 3 of 2023 concerning Issuance of Electronic Documents in Land Registration Activities, which revokes the Regulation of the Minister of Agrarian and Spatial Planning/National Land Agency No 1 of 2021 concerning Certificates Electronic. An e-certificate that has been issued according to the Regulation of the Minister of ATR/Head of BPN No 1 of 2021 is declared to remain valid and can be submitted for replacement to become an e-Certificate by the provisions of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency No 3 of 2023.

As an instrument to protect and provide certainty of land tenure, land registration strengthens the private relationship between the Indonesian people and the land. In other words, land registration is the operationalisation of the private aspect of the nation's rights to land. Land registration fosters and strengthens psychological feelings as a nation through control or ownership of land.

Issuing electronic documents in land registration activities is a way to take advantage of technological advances, with electronicization aimed at bringing benefits such as convenience and efficiency. It is felt not only by government administrators but also by the community. With the benefits it offers, such as more significant time, cost, and certainty, electronicization will

help landowners access justice. Electronicization guarantees land owners obtain justice by obtaining clarity on land status. Electronicization will also make resolving disputes inside and outside the court easier because information is easily obtained/accessed, and there is no need for a long process to ensure the authenticity of land documents.

Regulation of the Minister of ATR/Head of BPNN No 3 of 2023 concerning the Issuance of Electronic Documents in Land Registration Activities defines an Electronic System as a series of electronic devices and procedures that function to prepare, collect, process, analyse, store, display, announce, send, and/or disseminate electronic information in Land Registration activities.

Based on the results of an interview with Mrs. Baiq Malinda Mustianingsih as General Substance Coordinator at the Mataram City National Land Agency Office, it was stated that electronic certificates at the Mataram City National Land Agency Office had not been fully implemented, where only 3 (three) types of electronic certificates had been made, namely three title certificates electronic use, namely one electronic use proper certificate held by the Mataram City National Land Agency Office and two electronic use proper certificates held by the ATR/BPN West Nusa Tenggara (NTB) Regional Office. All three are published at BPN Mataram City because they are located in Mataram City. At each National Land Agency office, each district has issued an electronic certificate of use rights for its respective office.

Currently, the Mataram City National Land Agency Office can only issue electronic use rights certificates for buildings or land belonging to government agencies. It cannot issue electronic use rights certificates for the general public because the service department still needs to receive the centre's technical guidelines (technical instructions). Every time an electronic certificate is issued, it will be entered into the Certificate Bank system, where currently there are only three certificates, consisting of 1 Electronic Right to Use certificate held by the Mataram City National Land Agency Office and two Electronic Right to Use Certificates which is held by the ATR/BPN West Nusa Tenggara (NTB) Regional Office.

Currently, the transition from analogue certificates to e-certificates has hybrid status.

This means that two flows, manual and electronic, go hand in hand. The application/system already supports e-certificates because there is already a choice/room for non-electronic certificates or e-certificates.

The mechanism for an electronic system-based land registration system is regulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No 3 of 2023 concerning the Issuance of Electronic Documents in Land Registration Activities in Articles 7 to Article 21. Implementation of land-based registration activities for electronics in Indonesia is carried out by the Ministry of ATR/BPN reliably and safely, and the ministry is responsible for the proper operation of the electronic system.

Based on regulations, the flow of issuing land registration documents for the first time is done by applying, namely manually (coming to the counter) to verify the completeness of the document (can use host-to-host data), then scanned by the counter officer and then given a notation and secured with a Seal Electronic. It can be submitted online via the electronic system by uploading the application and required documents, as well as a Statement of Conformity between the printed document and the document uploaded via the electronic system. Then, after the document is uploaded, its conformity will be verified, and the scanned results will be notated and secured with an electronic seal.

After applying, the KKP (Computerised Land Activities) process is carried out by collecting and processing Physical Data, namely by creating an Electronic Measurement Letter. The activities that result from the KKP process are electronic documents. Electronic Documents include Electronic Documents issued through the Electronic System and/or Electronic Documents, which are scans of printed documents. Electronic Documents issued through the Electronic System, as intended in Article 5 §1 letter a, are ratified using an Electronic Signature by the provisions of statutory regulations. To guarantee authenticity, Electronic Documents, which result from scanning printed documents as intended in Article 5 § 1 letter b, are affixed with an Electronic Seal by statutory regulations.

Next, rights bookkeeping activities are carried out, which produce an Electronic Land Book (BT-el) and the issuance of an Electronic Certificate. The date of ratification of the Book of Rights is recorded at the time of ratification of the audit results. E-certificates are issued as electronic documents and authenticated with TTE (Electronic Signature). The e-certificate is given to the right holder/nazhir of a single land account through an electronic system to access the e-certificate as land ownership identity. So the right holder/nazhir will have a land account to access his e-certificate and will no longer keep the land certificate in paper form. However, the rights holder/nazhir can be given an official copy of the e-certificate printed on paper with unique specifications. Only authorised parties can change the data in the account; the account owner can only change his e-Certificate if an officer changes physical data and/or legal data.

An electronic certificate can only be given to the right holder/nazhir if the physical or juridical data is complete or disputed. Suppose the physical or juridical data has been completed or the dispute is resolved. In that case, access to the Electronic Certificate or El-Certificate can be given to the rights holder/nazhir. As a security measure, the Electronic Certificate can only be viewed and cannot be downloaded and/or changed. However, during the transition period, Electronic Certificates can be printed and given only to applicants who wish to print them (right holders/nazhir) except for government agencies and BUMN/BUMD or other rights subjects determined by the ministry.

E-certificates can be printed but are only valid as copies of electronic documents and as a form of proof of ownership of e-certificates, one of the functions of which is to facilitate service. The rights holder/nazir must understand and pay attention to the provisions regarding ownership of the Electronic Certificate and/or its printout, which are listed in the attention column at the bottom of the e-certificate.

Apart from issuing land registration documents for the first time, there is a process for issuing land registration data maintenance documents, which are physical and judicial data changes. First, the application is submitted in three ways, namely manually (coming to the counter), online (Electronic System), or maintaining Land Registration data based on deeds through the Land Deed Making Officer (PPAT). PPAT reports

the deed and simultaneously registers the application to maintain registered Land Registration data within 7 working days of signing the deed. PPAT completes all required documents. If the documents are complete and meet the requirements, the prospective recipient of the rights will be notified of the PNBP payment. Applications are processed after payment of PNBP.

After the application is processed, KKP activities will be carried out, and rights bookkeeping activities will continue, producing an electronic Land Book and the issuance of an e-certificate. Maintenance of Land Registration Data is recorded on BT-el as new Data Blocks, which are stored sequentially according to the land registration history. The e-certificate resulting from maintaining land registration data continues the previous e-certificate. After the advanced edition of the e-certificate is issued, the last edition of the e-certificate is declared invalid and functions as a history of the Land Registry. The latest edition of the e-certificate is then handed over to the right holder/nazhir as a single land account via the Electronic System as land ownership identity.

From the explanation above, it is clear that the electronic land registration system is something new, and the electronic system must be socialised first. Registration of e-certificates uses a digital system. To issue an e-certificate, the requirement is to withdraw an analogue certificate. You can't just issue an e-certificate. The reason the issuance of e-use certificates is currently only carried out for government agencies is that the services at the BPN Office have not received the technical guidelines (technical instructions) related to e-Certificates because existing regulations, including the latest ATR/BPN Ministerial Regulation, are not enough. Apart from that, until now, there has been no application for issuing an e-Certificate from outside the agency. Electronic Certificates have only been socialised to the extent of issuing Electronic Certificates, but services such as transfers (maintenance of physical data and juridical data), roya, etc., still need to be available. However, the system already supports e-certificates because there is already a choice of non-electronic certificates or e-certificates.

Compared to issuing an analogue certificate, issuing an electronic certificate will be cheaper because it does not need to be printed unless the

applicant wants it printed. There is no fee (Rp. 0) for e-use certificates that have been issued because all three are government agencies. Until now, the Mataram City BPN has been using PERKPBPN No 01 of 2010 concerning Service Standards and Land Regulation as technical guidance, so it is still waiting for new technical regulations regarding e-certificates.

The obstacle the Mataram City National Land Agency Office faces in preparing e-certificates is data validation from physical to digital certificates, predominantly analogue certificates that have been issued for a long time. Several requirements for issuing an e-certificate must be fulfilled in digital data. Everything from the physical certificate is input into the system, such as who the owner is and where the rights come from. If one is not completed, an e-certificate cannot be issued. For example, when filling in data, many of the data on analogue certificates issued long ago still need to be completed. Hence, the blank parts on the old certificate are challenging to fill in and must be consulted first to complete the data. Meanwhile, this e-certificate equates to new certificates, so newly issued certificates are more accessible for input data.

In the context of issuing e-certificates, in 2023, the Mataram City BPN is completing data validation, which currently stands at 69.33%. Validation and digitisation of land books, measuring letters, and documents are the gateway to electronic certificates. All certified land is registered, while registered land is not necessarily certified. So, in Mataram City, all land is 100% registered, but some still need to be certified, and those registered are currently in the PTSL process.

Implementing electronic land services can provide benefits namely, with electronic services, there will no longer be long queues at the National Land Agency Office, they cannot be faked, overcoming the land mafia problem, with the digitisation of land documents, all land plot data will be recorded and integrated so that can be checked online. Meanwhile, the benefits of electronic certificates are supervision and guidance over control, ownership, use and exploitation of rights, provision of land, and increasing land value, as well as as a source of income by providing land information services.

Legal Strength of Electronic Use Rights Certificate as Proof of Control of Land Rights

Based on the results of an interview with Mrs Baiq Malinda Mustianingsih as Coordinator of General Substances and Personnel at the Mataram City National Land Agency Office, it was stated that the legal position of electronic certificates at the Mataram City National Land Agency Office is the same as analogue certificates by Article 147 of Law No 6 of 2023 concerning the Determination of Perppu No 2 of 2022 concerning Job Creation into Law which reads: "Evidence of land rights, ownership rights to apartment units, management rights and mortgage rights, including deeds of transfer and encumbrance of land rights and other documents relating to land can be in electronic form".

Furthermore, according to Law No 11 of 2008 concerning Information and Electronic Transactions, the position of an electronic certificate is legal proof and authentication because this electronic land certificate contains a TTE or what is usually called an Electronic Signature. A signature is an identity that functions as a sign of agreement to the obligations attached to the deed. Likewise, electronic certificates are known as electronic signatures or (digital signatures), which are a substitute for electronic signatures, which are electronic and have the same function as manual signatures [5].

People who want to make a land certificate must first register the land. Land registration is a series of activities carried out by the State/Government continuously and regularly in the form of collecting information or specific data regarding certain lands in certain areas, processing, bookkeeping and presenting and maintaining physical and juridical data. , in the form of maps and lists, regarding plots of land and flats, including the granting of certificates as evidence of rights for plots of land for which there are already existing rights and ownership rights over flats and certain rights encumbering them [2].

The document proving land ownership rights is called a Certificate, which contains a copy of the Land Book and Measurement Letter stitched together with a paper cover whose form is determined by the Minister (Article 13 § 3 Government Regulation No 10 of 1961). Government Regulation No 24 of 1997 determines that certificates of land rights,

management rights and land waqf can be in the form of one document containing the required physical and juridical data. However, until now, the analogue certificates that are still valid are land certificates as regulated in Government Regulation No 10 of 1961. Even though the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) has implemented electronic services since 2019. Four services have been integrated into electronic services: Electronic Mortgage Rights, Land Registration Certificates (SKPT), Checking Land Certificates and Land Value Zone Information (ZNT).

Land rights must be registered to ensure legal certainty for land rights holders, and a land rights certificate must be issued. The implementation of land registration is regulated in Government Regulation No 24 of 1997 concerning Land Registration. To implement Government Regulation No 24 of 1997, Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency No 3 of 1997 concerning Provisions for Implementing Government Regulation No 24 1997 concerning Land Registration was issued.

However, the existence of Government Regulation No 24 of 1997, along with the Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency No 3 of 1997 as implementing regulations, has yet to be able to optimise the implementation of land registration. This can be seen from the fact that there are still several problems in land registration practices, one of which is that community land still needs to be certified.

Electronic evidence has become known in law since the emergence of Law No 11 of 2008 concerning Electronic Information and Transactions jo. Law No 19 of 2016 concerning Amendments to Law No 11 of 2008 regarding Electronic Information and Transactions. Article 5 § 1 of the ITE Law explains that Electronic Evidence is Electronic Information and/or Electronic Documents and/or printouts, valid legal evidence that fulfils the formal and material requirements regulated in the Information and Transaction Law. Electronic.

In the evidentiary system in Indonesia, judges are bound by legal evidence, which means that judges can only make decisions or pass judgments based on evidence determined by law only, evidence in civil proceedings specified by

law regulated in Article 164 HIR/284 RBg regulates in a limited manner regarding evidence in civil cases, evidence, including: Letter proof; Witness; Estimate; Confession; Oath.

Apart from that, there are tools of evidence that can be used to obtain certainty regarding the truth of an event that is in dispute, namely local examination (descente), which is regulated in Article 153 HIR/180 RBg, and expert/expert witness testimony (expertise) which is regulated in Article 154 HIR/181RBg.

With the enactment of the ITE Law, there is a new regulation regarding electronic document evidence. Based on the provisions of Article 5 § 1 of the ITE Law, electronic information, electronic documents, and/or printouts are valid legal evidence.

Furthermore, Article 5 § 2 of the ITE Law stipulates that electronic information or electronic documents and/or printouts, as referred to in § 1, are an extension of legal evidence and are by the procedural law in force in Indonesia. Thus, the ITE Law has determined that electronic documents and/or their printouts are valid evidence and are an extension of legal evidence by the procedural law in force in Indonesia so that they can be used as evidence in court.

Based on the provisions of Article 5 § 3 of the ITE Law, it is determined that electronic information and/or electronic documents are declared valid if an electronic system is used under the provisions of the ITE Law. Thus, the use of electronic documents as evidence is considered valid if an electronic system is used by the provisions as stipulated in Article 6 of the ITE Law No 11 of 2008, which determines that electronic documents are considered valid as long as the information contained therein can be accessed, displayed, its integrity is guaranteed and can be accounted for, thereby explaining a situation. In addition, electronic documents can be equivalent to documents made on paper, as specified in the General Explanation of the ITE Law.

Based on the provisions of Article 5 § 4 of the ITE Law, there is an exception, so if the parties want to make a formal agreement, it is considered invalid if it has not been manually stated in written form, either in the form of a private deed or an authentic deed. Examples of formal agreements include a Peace Agreement (Article 1851 BW), a Grant Agreement (Article 1682 BW),

as well as a sale and purchase agreement with a land object, a sale and purchase deed for a plot of land (Government Regulation No 24 of 1997 concerning Land Registration). The fundamental thing in presenting electronic evidence at trial is the issue of the validity of the electronic evidence, where the judge must assess the authenticity of the electronic evidence by examining it to fulfil the formal and material requirements of the electronic evidence. The requirements for electronic evidence to be valid at trial have been explained generally in Article 6 of the ITE Law; however, technically or formally, there are no rules to regulate it; currently, to maintain the integrity of the authenticity of electronic evidence, it is based on Government Regulation No 82 of 2012 and ISO 27037- 2012.

Apart from the need to formulate appropriate legal considerations, judges must authenticate electronic evidence based on the principle of *ius curia novit*. This principle attaches an obligation to judges to play an active role in discovering, developing, or forming new law if no written law is found or a statutory regulation whose rules still need to be clarified [6]. Applying this principle is contained in Article 10 § 1 of Law No 48 of 2009 concerning Judicial Power.

This provision requires the court to examine, try, and decide on a case submitted even if the law does not exist or is unclear. Regarding electronic evidence, until now, there has been no explicit obligation for judges to authenticate electronic evidence using a specific mechanism. No provisions guide judges on whether this is done directly via electronic evidence storage devices or imaging data results.

Given the easily changed nature of electronic evidence, it has the potential to cause metadata changes or data hash values to change if the examination is carried out directly via a storage device. Therefore, checking the authentication of electronic evidence is essential for judges. In this context, judges are obliged to apply appropriate mechanisms to examine the authentication of electronic evidence based on the principle of *ius curia novit*.

Through the Ministry of ATR/BPN, the Government of the Republic of Indonesia plans to implement electronic certificates as proof of ownership of land rights among the community. This electronic certificate is guided by the Regulation of the Minister of ATR/Head of BPN No 3 of 2023 concerning Electronic Certificates.

The regulations state that an electronic system is applied for first-time land registration, maintaining land registration data, recording changes to data and information, and media transfer.

Land registration is a series of activities carried out by the government continuously and regularly, including collecting, processing, bookkeeping and presenting and maintaining physical data and juridical data in the form of maps and registration regarding plots of land and apartment units, including the provision of letters and proof of land parcels to which there are already existing rights and ownership rights to apartment units as well as certain burdensome rights. The government carries out land registration to provide legal certainty for the people in the land sector.

Still, while a third party can collect physical data in the field, the final results must be validated by an official declared by the government to have the authority to do so. The results of physical data collection need to be validated by authorised officials because they aim to be used as evidence.

The purpose of land registration is to provide a guarantee of legal certainty known as *recht cadaster* or legal cadaster. The guarantee of legal certainty that will be provided in land registration is related, among other things, to the certainty of the status of the rights being registered, the certainty of the subject of the right and the object of the right. The final result of the land registration implementation is in the form of a land certificate as proof of rights to the land. Providing guarantees of legal certainty regarding land rights is one of the objectives of enacting the UUPA.

Efforts to make this happen include the availability of legal instruments that are written entirely, clearly, and consistently. For interested parties, it will also be easier to obtain information related to the land, such as subjects, objects, and land rights attached to the land. In its regulations, the government is obliged to guarantee legal certainty through land registration throughout the territory of the Republic of Indonesia.

It has been previously explained that the final product of the land registration process is a land certificate that will be transferred from an analogue certificate to an electronic certificate. In

the HIR system and Civil Procedure Law, judges base evidence on valid evidence, meaning that judges are only allowed to make decisions based on evidence determined by law.

In Civil Procedure Law, evidence is specified in Article 164 HIR/284 RBg and the 1866 Civil Code. In civil evidence law in Indonesia, formal jurisprudence still needs to accommodate electronic documents or information as evidence in resolving disputes through the courts. However, with the enactment of Law No 8 of 2007 concerning Company Documents, Indonesia has begun to accommodate electronic documents as legal evidence. For example, in capital market law, the term online trading is found on the stock exchange, and electronic means are used to store information and documents in a company.

Limitatively, it has been stated that evidence in civil case law includes written evidence or letters, testimony or witness statements, allegations, confessions and oaths. Articles 138, 165 and 167 HIR, 164, 285 to 305 RBg and 1867 to 1894 BW regulate written evidence or letters. Electronic land certificates are classified as written evidence that is authentic deeds because these deeds have evidentiary power in both formal and material terms. The speciality of this authentic deed lies in the power of proof of birth, which means that the authentic deed proves the truth of what is seen. In terms of material strength, although not all authentic deeds in official deeds have material evidentiary strength, authentic deeds which are partij deeds have material evidentiary strength. The strength of this material evidence will be tested formally in court.

With the enactment of law No 11 of 2008 concerning Electronic Information and Transactions, better known as the ITE Law, electronic information and documents have become part of valid evidence and have valid legal consequences. As stipulated in the ITE Law, electronic land certificates are valid evidence in the eyes of the law.

This is reinforced by Article 5 § 2 and Article 6 of the ITE Law, which states that electronic information and/or documents and/or printouts of electronic documents are an extension of valid evidence by procedural law in force in Indonesia. The presence of the ITE Law prioritises legal issues or problems of evidence. This can be seen in the general explanation of the ITE Law, which states the importance of proof, considering that

electronic information has yet to be accommodated in a comprehensive procedural law system in Indonesia. Still, it is also very vulnerable [7].

The provisions of Articles 164 HIR and 284 RBg state that evidence in a civil case consists of written evidence or letters, testimony or statements from witnesses, allegations, confessions and oaths. Other evidence that can be used to obtain the truth and certainty of disputed or problematic events are local examinations and expert testimony or expert witnesses as regulated in Article 153 and Article 154 HIR and Article 180 and Article 181 RBg.

The proof presents legally valid evidence submitted to the judge carrying out the case examination to provide certainty regarding the truth of an event. The position of proof in a trial process is to strengthen arguments during the trial in court. Therefore, if someone wants to win their case in court, evidence is one of the keys for parties who wish to convince the judge to win a case. However, the current practice of using legal evidence as contained in Articles 5 and 6 of the ITE Law, which is the basis for the use of electronic mail in civil trials, is still often questioned about its evidentiary strength.

As time goes by, accompanied by the increasing No of electronic-based activities, evidentiary tools in the form of information and electronic documents in civil cases will become frequently used to facilitate the implementation of the law. The use of printed, electronic documents must also be able to be used as valid evidence in the eyes of the law. Therefore, currently, it is known as electronic evidence.

To be said to be valid evidence, the electronic information or document must meet the requirements as contained in Articles 5 and 6 of the ITE Law, which states that electronic information or documents can be used as valid evidence if the use of the electronic system meets the provisions as stated in has been required by the ITE Law, namely an electronic system that is reliable and safe, and meets the requirements.

Article 6 of the ITE Law also emphasises that electronic information or documents will be considered valid if the information and data can be easily accessed and displayed. Its integrity is guaranteed and can be accounted for so that it can explain a situation. In its development, for example company documents, Law No 8 of 1997

concerning Company Documents regulates electronic evidence, which demonstrates that if a company document stored on microfilm has the position of authentic written proof, then the document can be used as valid evidence if a dispute arises in court at a later date.

One of the aims of implementing this media transfer is to use paper efficiently, often known as paperless. Apart from that, by using electronic documents, the creation, processing and storage of electronic information will be more efficient in terms of cost and time. However, the discourse on transferring media from analogue land certificates to land certificates in electronic documents still requires further regulations and arrangements, both in terms of security and the validity of these electronic land certificates if they are used as evidence during court proceedings.

Based on these provisions, the author thinks that electronic documents must have an evidentiary value, which can be categorised as formal and material requirements, namely first, in the form of electronic information that is created, forwarded, sent, received or stored, which can be seen, displayed and/or heard via a computer or system electronics, including writing, sound, images and so on that have meaning or can be understood by people who can understand them. The second value is declared valid if it uses or originates from an electronic system by the provisions regulated in the law. The third evidentiary value is that it is considered valid if the information contained therein can be accessed and displayed, its integrity is

guaranteed, and it can be accounted for to explain a situation.

CONCLUSIONS

Regulations for registration of the electronic right-of-use certificates have been recognised in various laws and regulations, especially in the ATR/BPN Ministerial Regulation No 3 of 2023 concerning issuing Electronic Documents in Land Registration Activities and mechanism registration of electronic use proper certificates. It is regulated in Articles 7 to Article 21, namely first by submitting an application (coming to the counter or online), then carrying out the KKP (Computerised Land Activities) process in the form of collecting and processing Physical Data, then carrying out rights bookkeeping activities which produce an Electronic Land Book (BT-el), El Certificate is given to the right holder/nazhir of a single land account through an electronic system to access the El Certificate as land ownership identity. The legal force of an electronic use proper certificate can be used as legal evidence because Article 147 of Law No 6 of 2023 concerning the Stipulation of Perppu No 2 of 2022 concerning Job Creation Becoming a Law explains that Evidence of land rights, ownership rights to units apartments, management rights and mortgage rights, including deeds of transfer and encumbrance of land rights and other documents relating to land can be in electronic form, where the binding force on the electronic certificate is an electronic signature by Article 11 of Law No 19 of 2016 concerning Amendments to Law No 11 of 2008 concerning ITE.

REFERENCES

1. Chandra, S. (2005). *Sertifikat Kepemilikan Hak Atas Tanah Persyaratan Permohonan Di Kantor Pertanahan* [Certificate of Land Ownership Application Requirements at the Land Office]. Jakarta: Grasindo (in Indonesian).
2. Harsono, B. (2003). *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria Isi dan Pelaksanaannya* [Indonesian Agrarian Law: History of the Formation of the Basic Agrarian Law Its Content and Implementation]. Jakarta: Djambatan (in Indonesian).
3. Arba. (2016). *Hukum Agraria Indonesia* [Indonesian Agrarian Law]. Jakarta: Sinar Grafika (in Indonesian).
4. Amiruddin., & Asikin, Z. (2019). *Pengantar Metode Penelitian Hukum* [Introduction to Legal Research Methods]. Depok: Raja Grafindo Persada (in Indonesian).
5. Hakim, A. R., & Idrus, M. A. (2021). Prosedur Penerbitan Sertifikat Elektronik Sebagai Bukti Autentik Penguasaan Hak Atas Tanah [Procedures for Issuing Electronic Certificates as Authentic Evidence of Tenure of Land Rights]. *Juridica*, 3(1), 4–28. doi: [10.46601/juridica.v2i2.190](https://doi.org/10.46601/juridica.v2i2.190) (in Indonesian).

6. Mulyadi, L. (2008). *Bunga Rampai Hukum Pidana: Perspektif Teoritis dan Praktik* [Bunga Rampai Hukum Pidana: Theoretical and Practical Perspectives]. Bandung: Alumni (in Indonesian).
7. Fakhirah, E. L. (2009). *Bukti Elektronik Dalam Sistem Pembuktian Perdata* [Electronic Evidence in the Civil Evidence System]. Bandung: Alumni (in Indonesian).