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Challenges in Implementing Land Certificates at the Ministry of Agrarian Affairs and Spatial Planning

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ABSTRACT

This research discusses the challenges of implementing electronic land certificates as a digital transformation step in the Ministry of Agrarian and Spatial Planning (Ministry of ATR/BPN). As technological developments require an organization to transform, public organizations are no exception. This study takes into account the Ministry of ATR/BPN's digital transformation of the public sector, particularly the implementation of electronic land certificates. The Ministry of ATR/BPN continues to follow developments with the times, but of course this is not easy because in its implementation it faces many challenges. The method used in this research is a normative juridical research method with a data collection model based on library research. This research tries to describe it descriptively so that it will become an illustration of the implementation of digital land certificates. And in the next discussion, we will discuss the challenges and solutions that have been taken by the Ministry of ATR/BPN. The author concludes that, in the future, electronic land certificates will be a necessity that cannot be avoided for various important reasons. Electronic certificates can also reduce the number of disputes, conflicts, and land cases. However, the process requires sufficient time because technology transfer requires skilled and adequate human resources.

A. Introduction

The advancement of technology has significantly influenced daily life, leading to a reliance on technology itself. This technological progress ultimately demands both individuals and organizations to undergo transformation, one of which is digital transformation. Digital transformation can be defined as a process aimed at enhancing an organization by bringing about significant changes in its characteristics through the adoption of information technology, computing, communication, and connectivity (Putri et al., 2021). In broader terms, digital transformation signifies a shift impacting digital technologies across all facets of human existence (Stolterman & Fors, 2004). It serves as a strategic response by organizations to navigate through the threats and challenges posed by technological advancements. Digital transformation entails the radical integration of digital technologies to enhance the performance of companies or governmental bodies (Westerman et al., 2015).

In the global context of land registration systems, modernization has been driven by the integration of information and communication technology. The Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, abbreviated as the Ministry of ATR/BPN, responsible for land governance, has taken proactive steps to embrace digital transformation. This entails transitioning from traditional methods of land rights certification to electronic formats. This transition marks a significant milestone in the modernization of land registration systems, ensuring public access to online land registration and the establishment of infrastructure for electronic registration processes.

The transition to electronic land registration is an inevitable consequence of advancements in information and communication technology, as observed in various countries. In Indonesia, the adoption of electronic land certificates is guided by Ministerial Regulation ATR/Head of BPN Regulation No. 1 of 2021 on Electronic Land Certificates, subsequently amended by Regulation ATR/BPN No. 3 of 2023 concerning the Issuance of Electronic Documents. These regulations provide the framework for policy implementation. The shift from traditional certificates to electronic ones aims to mitigate land disputes and legal claims (Syah, 2019). This paper seeks to describe the regulation of electronic land certificates and the challenges associated with their implementation.

Several studies have emerged regarding electronic certificates, covering a range of topics from electronic documents to certificates themselves. For instance, Christiani & Sutrisno (2019) address the authentication of digital archives, highlighting it as a prerequisite for obtaining electronic certificates. They discuss the process of authenticating digital archives, especially relevant in Indonesia where many archives exist in hardcopy format, necessitating conversion and authentication (Setianingsih, 2022). A study by Mujiburohman also explores media conversion and digital transformation toward electronic certificates (Mujiburohman, 2021). Additionally, studies examine the validity of electronic archives as evidence, particularly in legal contexts, where they can be presented in court (Rusmiatiningsih, 2017 and 2019). Furthermore, ongoing research by Andari & Mujiburohman (2023), Wulan et al. (2022), Salim et al. (2022), and Pramesti et al. (2023) delves into the policy and legal considerations surrounding media conversion and their admissibility in court proceedings.

This study shifts its focus from viewing digital transformation merely as a policy formulation to examining its implementation at the local level. It delves into the experiences of regions tasked with implementing electronic certificate policies, an area that has been relatively underexplored in research. The objective is to gain deeper insights into how the implementation of electronic certificate policies affects society.

B. Research Method

This research adopts a qualitative approach, focusing on data collection through literature review and document analysis (Sugiyono, 2019). The qualitative approach is chosen because this study aims to comprehend and analyze issues related to Legal Terminology and Challenges in Implementing Electronic Land Certificates at the Ministry of Agrarian Affairs and Spatial Planning in depth, by examining relevant literature and related documents.

Data analysis constitutes a crucial phase in the author's methodology. Qualitative data analysis is carried out continuously until comprehensive conclusions are drawn. This study commences with an extensive literature review concerning the concept of secondment, its implementation in governmental institutions, potential benefits, and foreseeable challenges. Data collection involves the scrutiny of internal ATR/BPN documents pertaining to electronic certificates, extant policies, and relevant records. Document analysis facilitates comprehension of existing regulations, potential hurdles, and measures undertaken or planned for electronic certificates. Moreover, the data analysis process in this study encompasses several stages: data collection, data reduction, data presentation, and conclusion drawing (Creswell, 2019).

C. Regulation of Electronic Land Certificates

Land ownership regulations in Indonesia have been established since 1960 under Law No. 5/1960, known as the Basic Agrarian Principles or the Basic Agrarian Law (UUPA). The process of determining land rights is governed by laws and government regulations aimed at preventing misuse. One fundamental aspect of the UUPA pertains to the types and ownership of land certificates. Article 16, paragraph (1) of the UUPA covers various land rights, including land ownership, land use rights, building use rights, lease rights, and other related rights (Sappe, 2021).

In general, the enactment of the UUPA aims to establish the foundation for the formulation of national agricultural laws, as outlined in the General Declaration. This law serves as a means to achieve prosperity, happiness, and justice for the nation and the state. Another objective is to lay the groundwork for the unification and simplification of Land Law (Muthallib, 2020).

Fundamentally, land ownership certificates stemming from diverse government initiatives still harbor gaps in ensuring legal certainty, potentially harming the populace. Instances of forged land certificates, overlapping certificates, and the prevalence of land mafias persist, adversely affecting communities. However, the digital transformation within the Ministry of Agrarian Affairs and Spatial Planning (ATR/BPN) offers a ray of hope, aiming to eradicate prevalent issues like certificate overlaps.

The term "transformation" pertains to organizational changes that profoundly affect its structure. Digital transformation, specifically, refers to the radical use of digital technology to enhance and achieve the desired performance and goals of a company (Royyana, 2018). In academic circles, digital transformation denotes organizational changes influenced by technological advancements within the organization and its environment (Widnyani et al., 2021).

The introduction of electronic public services in land administration commenced in 1997 with the Land Office Computerization (LOC) program, later renamed as the Land Administration Computerization Activity (KKP), and eventually transitioned to the Web-Based Application/KKP-Web. These land services are slated for further enhancement, development, and promotion as electronic services. Zevenbergen attributes this shift to the independent and ineffective collaboration between land registration and cadaster functions. Technical improvements or other enhancements treating

various aspects as an integrated system are essential, along with a comprehensive approach to studying, analyzing, and improving them (Mujiburohman, 2021).

Regarding electronic-based land services, four types of land services are implemented nationwide: Land Value Zone Information (ZNT), Land Certificate Inspection, Land Registration Certificate (SKPT), and Electronic Mortgage Rights.

Numerous services offered by the Ministry of Agrarian Affairs and Spatial Planning are yet to undergo digital transformation. However, the ministry has not overlooked this aspect; it has devised a roadmap for digital transformation, with several programs slated for digitization. These initiatives will be rolled out gradually, with a key focus being the digitization of land certificate registration into electronic formats (Kusmiarto et al., 2021).

In general, land registration is a series of activities conducted by a State/Government continuously and systematically to collect specific information or data about a particular plot of land in a specific area, process it, store it, and utilize it for the benefit of the populace. This is carried out in the form of legal certainty assurance in the field of land administration.

In relation to this, one of the key digital transformation programs at the Ministry of ATR/BPN is the electronic certificate initiative. To address this, Ministerial Regulation No. 1 of 2021 on Electronic Land Certificates was issued, subsequently updated with Ministerial Regulation No. 3 of 2023 on the Issuance of Electronic Documents by the ATR/BPN. These regulations primarily aim to meet the legal needs of local communities in line with technological advancements. As stated in the preamble of the Ministerial Regulation, the objective is to modernize land services, thereby enhancing service delivery to the public and optimizing the utilization of information and communication technology through the provision of electronic land services (Wulan, et all, 2023).

The electronic land certificate represents a crucial aspect of the ongoing digital transformation within the Ministry of ATR/BPN), driven by the following considerations (Febrianti, 2021):

1. Enhancing efficiency and transparency in registration processes;
2. Safeguarding archives and land documents through digitization of land deeds;
3. The correlation between the increasing number of properties registered through the Systematic Full Land Registration (PTSL) and the rise in derivative services;
4. Adapting to modernization trends and the demands of economic, social, and cultural ecosystems toward Industry 4.0 by embracing technological advancements;
5. Ensuring the security of physical cadaster documents through the implementation of electronic cadaster in the face of escalating natural disasters.
6. Collaborating successfully with various government agencies and the private sector to modernize service delivery.
7. Boosting Indonesia's ease of doing business ranking by enhancing property registration value.
8. Providing an accessible electronic system that reduces the need for physical presence at local land registration offices by up to 80%.

9. Addressing the prevailing perception of traditional land service management by adopting electronic land certificates, a step already taken by several other countries.

The output of this new system comprises electronic documents. Electronic documents, in this context, encompass all electronic information created, transmitted, sent, received, or stored in analog, digital, electromagnetic, optical, or similar formats. They can be displayed, presented, and/or heard through computers or electronic systems. This includes letters, numbers, access codes, symbols, and perforations, making them understandable to those who interpret them. In this context, digital certificates or electronic documents take the form of digital certificates.

Electronic land certificates essentially contain electronic signatures and identities indicating the legal entity status of a party in an electronic transaction, issued by a digital certificate provider or Electronic Certification Provider (ECP). The ECP is based, among other things, on Government Regulation on the Administration of Electronic Systems and Transactions (PSTE) Article 60, which includes: (1) Screening of prospective e-certificate holders; (2) Issuance of electronic land certificates; (3) Extension of the validity period of electronic land certificates; (4) Blocking and revocation of digital certificates; (5) Validation of electronic land certificates; (6) Creating a list of active and frozen digital certificates (Setiawan, 2015). In the context of digitization or transformation, Law No. 11 of 2008 concerning Electronic Information and Transactions states that electronic information and documents are valid evidence. Digital certificates are issued by electronic systems as electronic documents to realize the modernization of land administration (Santosa & Purwaningsih, 2022).

Electronic land certificates are governed by Law No. 11 of 2020 concerning Job Creation (UU Cipta Kerja), which has been amended by Government Regulation in Lieu of Law (Peraturan Pemerintah Pengganti Undang-Undang - Perpu) No. 2 of 2022. Article 147 of UU Cipta Kerja stipulates: "Evidence of land rights, ownership rights over condominium units, management rights, and mortgage rights, including deeds of transfer of land rights and other documents related to land, may be in electronic form. “Data, electronic information, and/or electronic documents encompass the rights holder data, physical data, and legal data regarding valid and authenticated goods stored in a database within an electronic system. In practice, this involves data collection, processing, and presentation. The results obtained must be documented by authorized or designated officials. Electronic documents issued through an electronic system are then approved using electronic signatures.

Electronic land certificates are secured through an electronic system, verified with electronic signatures, and comply with ISO security standards. They utilize cryptographic techniques such as encryption by the National Cyber and Crypto Agency (Badan Siber dan Sandi Nasional - BSSN), facilitating relatively easy management. Electronic documents can be preserved, managed, and accessed without spatial or temporal constraints, thereby reducing the risks of loss, fire, and theft (Febrianti, 2011). Four aspects are pertinent to the legal certainty of electronic land certificates (Nafan, 2022):

1. Legal positivism, manifested through legislation (statutes), embodies laws grounded in facts rather than formulations subject to judicial interpretation. To ensure clarity and simplicity, these facts

must be explicitly stated. This holds true particularly when legal statutes undergo infrequent revisions. Since its enactment on January 12, 2021, Minister of Agrarian Affairs/Head of the National Land Agency Regulation No. 1 of 2021 concerning electronic land certificates, subsequently updated with Ministerial Regulation No. 3 of 2023 regarding the Issuance of Electronic Documents, stands as a clear regulatory framework enshrined in legislation and is entrenched within the hierarchy of Indonesian law, as stipulated in Law No. 15 of 2019 concerning Amendments to Law No. 12 of 2011 regarding the Formation of Laws;

2. Legislation grounded in factual evidence. When referring to relevant conditions that underlie the formation of laws or regulations, such evidence can be examined by consulting the preamble of Minister of Agrarian Affairs/Head of the National Land Agency Regulation No. 3 of 2023 regarding the Issuance of Electronic Documents;
3. Facts should be formulated in a clear and easily applicable manner, devoid of ambiguity, and logically sound. This ensures the creation of a normative system that is coherent with other norms, thereby avoiding conflicts or normative clashes. Minister of Agrarian Affairs/Head of the National Land Agency Regulation No. 3 of 2023 regarding the Issuance of Electronic Documents is drafted using established legislative drafting techniques;
4. Legal positivism should undergo minimal changes. This principle does not imply a stagnant legal framework but rather emphasizes the need for stability and consistency in law enforcement, ensuring its continued effectiveness and timely implementation. As for Minister of Agrarian Affairs/Head of the National Land Agency Regulation No. 3 of 2023 regarding the Issuance of Electronic Documents, it is currently in the preparatory stage at the operational/technical level in the field.

In addition to the theoretical significance associated with the theory of legal certainty, there is a need for regulatory outcomes that ultimately ensure legal certainty for the public in the event of issues arising from these regulations in the future. Similarly, with analog certificates, legal certainty is ensured by law through the issuance of certificates to land rights holders.

One of the primary objectives of electronic land certificates is to mitigate land disputes and ensure legal certainty over land rights (cadastral legality). Meanwhile, the ultimate goal of the land registration process is the issuance of documents as evidence of land ownership rights. There are five stages in electronic land registration. These stages apply to initial land registration or land that was previously unregistered.

Figure 1. Difference between Electronic and Analog Certificates
Source: Ministry of ATR/BPN

The digitization of land certificates offers several advantages (Febrianti, 2011):

1. Electronic land management enhances efficiency in input, process, and output nodes.
2. Digitizing land registration contributes to safer archiving and management of land registration.
3. The intensity of derivative services increases proportionally with the number of registered lands.
4. Improved data security ensures that all provided data are safeguarded through proper security measures.
5. Given the modernization trend and the demands of economic, social, and cultural ecosystems towards Industry 4.0, adaptation to existing technological changes and support for a paperless office culture in the digital era is inevitable.
6. Mitigating the risks of physical document loss, fires, rain, or theft. Owners possess certificates in electronic form, ensuring that if lost or damaged, data is securely backed up electronically.
7. Enhancing the ease of doing business will increase.
8. Electronic systems allow access anywhere, anytime, minimizing transaction costs.
9. Reduction in legal disputes and land-related issues.

Challenges in Implementation

Public policies are anticipated to yield positive outcomes, yet they encounter hurdles during execution. It is vividly recalled that the introduction of electronic land certificates was perceived as rushed and lacked thorough direct engagement with the public. Moreover, media reports, particularly

on social platforms, speculating about the Ministry of ATR/BPN revoking land certificates from their owners, inevitably sparked unrest within the community.

The ongoing debate surrounding Electronic Land Certificates persists. At the legislative level, the electronic land registration system boasts a solid and comprehensive legal foundation. However, the implications of the implementing regulations encompass not only their specifications and completeness but also the willingness of various involved parties thereafter. These parties include the administrators of the electronic land registration system, namely the Ministry of ATR/BPN, and the general public. The enforcement of Regulation of the Minister of ATR/Head of BPN No. 3 of 2023 concerning the Issuance of Electronic Documents directly affects registered or certified land. According to the provisions, rights to land, land management rights, ownership of houses, mortgages, or land designated as endowments are registered through the electronic system and electronic land certificates are issued. These certificates are then provided to the right holders/Nazhirs as evidence of their rights and access to the certificate within the electronic system.

Undoubtedly, alongside the array of advantages and conveniences offered by possessing an electronic land certificate, there exist certain limitations associated with electronic systems. Firstly, there is the educational aspect; not all members of the Indonesian populace are adept at utilizing internet-based information and communication technology. Secondly, there is the economic dimension; a significant portion of society lacks the necessary hardware, such as computers or internet-enabled mobile phones.

From the implementation standpoint, the Ministry of ATR/BPN is not devoid of weaknesses. Firstly, the human resources within the Ministry of ATR/BPN exhibit varying levels of digital literacy, which are not evenly distributed. Secondly, the facilities available in land offices, both in terms of the quality and quantity of infrastructure like electricity and internet connectivity to support operations, are not uniformly standardized. These specific cause-and-effect relationships must be anticipated, as they may lead to legal ramifications concerning the authenticity of issued digital certificates (Mujiburohman, 2018). Many stakeholders believe that digital certificates are not currently necessary due to ongoing land disputes, counterfeit certificates, certificate duplications, and other reasons.

The implementation challenges mentioned above do not lack solutions. The Ministry of ATR/BPN is persistently refining processes to ensure the smooth execution of electronic land certificates as planned. The ministry firmly believes that electronic land certificates not only enhance security against counterfeiting by land mafias but also serve as a safeguard against natural disasters, minimizing archive losses. The proactive measures taken by the Ministry of ATR/BPN to address implementation challenges are as follows:

1. Human resources, The Ministry of ATR/BPN continues its efforts to enhance the competency and literacy of its staff through both short-term and long-term programs. Short-term initiatives include conducting online and offline training sessions for employees. Additionally, regular efforts to improve human resource quality are undertaken through webinars organized by the Human Resources Development Agency of the Ministry of ATR/BPN. Long-term programs are also in place,

such as providing opportunities for further studies, particularly for young employees, through the ATR/BPN Excellent Young Apparatus Program;

2. There is a push to improve the quality of facilities and infrastructure in land offices across every district and city in Indonesia. Access to network connections and computers is no longer a significant concern, as the Ministry of ATR/BPN has successfully undergone digital transformation with the Mortgage Certificate, which shares similar supporting facilities and infrastructure with electronic land certificates;
3. Individuals without internet access or electronic devices for registration are assisted by land offices to overcome this limitation. Moving forward, each land office will introduce self-service counters (similar to ATMs) for applicant convenience. Moreover, for electronic document outputs such as electronic land certificates, printing assistance will be available at the land office, ensuring accessibility for those without devices.

D. Conclusion

Land certificates serve as evidence of land ownership and are pivotal in legal contexts. The emergence of electronic land certificates signifies a shift driven by digital transformation. The adoption of electronic land certificates is underpinned by Ministerial Regulation No. 3 of 2023 regarding Electronic Document Issuance by the Ministry of ATR/Head of BPN. The transition from traditional to electronic certificates aims to mitigate land disputes and legal conflicts effectively.

However, the implementation of electronic certificates faces multifaceted challenges, including socio-cultural factors within local communities and fundamental issues such as the availability of supportive infrastructure. Yet, the Ministry of ATR/BPN actively addresses these challenges through initiatives aimed at enhancing workforce competencies and ensuring adequate facilities and infrastructure in land offices to facilitate the application process.

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