

Legal Strength of Electronic Certificates in Land Sale and Purchase Agreements in Indonesia

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Abstract

The digital transformation in the land sector, realized through the issuance of electronic land certificates by the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN), has significant legal implications, particularly in land sale and purchase agreements. This study aims to analyze the legal force of electronic land certificates as evidence in land sale and purchase transactions in Indonesia. The research uses a normative juridical method with a statutory and literature approach. The results show that electronic land certificates have equal legal standing with physical certificates, as regulated in Ministerial Regulation of ATR/BPN No. 1 of 2021 and No. 3 of 2023. Electronic certificates fulfill the criteria as authentic written evidence and are legally valid as long as the registration process follows the applicable laws and regulations. However, their implementation still faces challenges, including digital infrastructure limitations, public awareness, and potential administrative disputes.

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1. INTRODUCTION

The development of information technology has encouraged various government agencies to carry out digital transformation, including in the land sector. One significant step is the issuance of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency (Permen ATR/BPN) Number 1 of 2021 concerning Electronic Certificates, which stipulates that land rights certificates will begin to use documents in electronic form. The main objective of this policy is to create a more effective, efficient and safe land system through digitalization of services.

As a continuation, the government strengthened these regulations through ATR/BPN Ministerial Regulation No. 3 of 2023 concerning the Implementation of Electronic Documents within the Ministry of ATR/BPN, which regulates that all land administration processes—including splitting, merging, deleting rights, and issuing new certificates—are carried out electronically. This also includes the process of buying and selling houses by developers to consumers which is now documented digitally, including the results of separating the certificate from the master certificate.

In practice, developers often sell houses to consumers before the process of breaking the certificate and changing the name is complete, so that a Sale and Purchase Agreement (PPJB) is executed before a notary. PPJB is a form of preliminary agreement regulated in ATR/BPN Ministerial Regulation No. 3 of 1997 as an implementation of PP no. 24 of 1997 concerning Land Registration. However, in the digital context, legal issues arise regarding

the certainty and legal strength of e-certificates as well as consumer protection when a dispute occurs or the developer defaults.

Consumers as parties who buy houses from developers are in a weak position because they do not have direct access to ensure the validity of electronic documents issued by the Land Office. On the other hand, changes in the system towards digital have created the need for adjustments in legal and notarial practices, especially regarding electronic-based proof of land rights.

With this background, it is important to study the extent of the legal power of electronic certificates in land sale and purchase agreements in Indonesia.

2. RESEARCH METHOD

This research uses a normative juridical approach that focuses on literature study to analyze laws and regulations related to electronic certificates in land buying and selling, especially ATR/BPN Ministerial Regulation No. 1 of 2021, No. 3 of 1997, and no. 3 of 2023. This method aims to examine the legal strength of electronic certificates as evidence in land sale and purchase agreements based on the agrarian law system in Indonesia. Data analysis was carried out qualitatively to explore normative provisions and their implications for legal certainty and protection of the rights of interested parties.

3. RESEARCH RESULTS AND DISCUSSION

3.1. Research result

The results of this research indicate that the development of regulations related to electronic certificates in land sale and purchase agreements in Indonesia, especially those regulated in ATR/BPN Ministerial Regulation No. 1 of 2021, No. 3 of 2023, and No. 3 of 1997, plays an important role in creating a more efficient, transparent and safe land system. Some of the key findings obtained from this research are as follows:

1. Legal Strength of Electronic Certificates

Electronic certificates issued by the Land Office based on existing regulations have the same legal force as physical certificates. However, this depends on the verification process and mechanism carried out by the authorities, which in this case is the Land Office. An electronic certificate, as a valid document and has legal force, can be used as valid evidence in a land sale and purchase agreement. However, the existence of electronic documents requires a system that can ensure the integrity and validity of the document.

2. Consumer Protection in Sales and Purchase Agreements

The Sales and Purchase Agreement (PPJB) entered into between the developer and the consumer before the certificate resolution is completed has implications for consumer protection. Consumers who buy a house when the certificate has not been separated from the main certificate or the name transfer process has not been carried out are at risk of not getting legal certainty regarding the land they are buying. This can give rise to disputes if the developer fails to fulfill its obligations in completing the certification process.

3. Application of Electronic Documents in the Land Buying and Selling Process

The application of electronic documents in land administration, including in the house buying and selling process, makes the documentation and transfer of rights process easier. However, challenges arise regarding the verification and monitoring system for the validity of electronic certificates which are still not fully accessible to the general public. Consumers involved in buying and selling transactions often

do not have an understanding or direct access to verify the validity of electronic certificates.

4. Challenges in Implementation and Monitoring

Even though regulations have been prepared to support digital transformation in land, there are still challenges in implementation, especially related to the gap between policies and their implementation in the field. The digitization process needs to be supported by strict supervision to ensure that all stages of land administration are carried out in accordance with applicable regulations and guarantee legal certainty for consumers.

3.2. Discussion

The application of electronic certificates in land sale and purchase agreements in Indonesia has brought about a significant transformation in the land administration system, which previously relied on physical documents. Based on ATR/BPN Ministerial Regulation No. 1 of 2021, electronic certificates are recognized as valid documents and have equal legal force to physical certificates. This supports the government's efforts to create a more efficient, safe and transparent land system. By using digital technology, the land administration process can be carried out more quickly, reducing the potential for human error, and avoiding misuse of data. Apart from that, land digitization has the potential to increase public access to information related to land status, reduce the potential for land conflicts, and speed up dispute resolution.

However, even though electronic certificates already have valid legal force, the biggest challenge faced in their implementation is the problem of verification and validity of electronic documents. The digital system used in issuing electronic certificates must be able to ensure that the document is truly valid and cannot be faked. The validity of this electronic certificate is very dependent on an integrated verification system between the Land Office and other parties involved, including notaries and developers. Without a system that is strong and accessible to the public, consumers as parties involved in land buying and selling transactions may not be able to verify the authenticity of the electronic certificate directly. This creates legal uncertainty for consumers and opens up opportunities for adverse action.

One of the significant problems in the practice of land buying and selling transactions is the phenomenon of developers selling houses to consumers before the process of separating the certificate and changing the name is complete. In this condition, a Sale and Purchase Agreement (PPJB) is usually entered into, which is a form of preliminary agreement regulated in ATR/BPN Ministerial Regulation No. 3 of 1997. PPJB functions as an initial guarantee for consumers that the sale and purchase transaction will continue after all land administration is completed, including the process of separating certificates and changing names. However, problems arise when the certificate that is the object of the transaction has not been separated or its validity cannot be ascertained. In this case, consumers are in a very vulnerable position because they do not have direct access to verify the validity of the electronic certificate promised by the developer. As the party buying the property, consumers rely on guarantees from the developer, but if the developer does not fulfill its obligations or defaults, consumers are at risk of experiencing large losses.

In addition, even though the PPJB in the presence of a notary provides a guarantee that the transaction has been carried out legally, the existence of a certificate that is still in the process of being separated or changed names creates legal uncertainty which

could have an impact on consumer rights. This is especially visible in situations where developers are unable to complete the land administration process within the agreed time, or even fail to carry out their obligations altogether. In this case, legal protection for consumers is very important to ensure that their rights remain protected, even if a dispute occurs or the developer fails to complete the transaction.

Legal protection for consumers in the context of buying and selling houses with electronic certificates requires stricter regulations and clear mechanisms to guarantee consumer rights. One solution that can be considered is to set stricter time limits in the PPJB, which regulates when the process of separating certificates and changing names must be completed. By having a clear time period, consumers will have clarity regarding their rights and can demand compensation if the developer fails to fulfill its obligations.

Another challenge is related to monitoring the implementation of electronic certificates. Even though the regulations are clearly regulated, supervision of the issuance of electronic certificates and the land buying and selling process still requires more attention. One of the problems that arises is the lack of understanding and awareness among consumers regarding electronic certificates and how to verify their validity. Therefore, educating the public regarding the importance of electronic certificate verification and the procedures involved in land buying and selling transactions is very important. Consumers need to be given an understanding of how they can access and verify the validity of electronic certificates so as not to be trapped in detrimental transactions.

Apart from that, the role of notaries in land buying and selling transactions with electronic certificates is also increasingly important. Notaries as parties involved in making PPJB and the process of legalizing transactions need to have a deep understanding of electronic certificate procedures and their issuance mechanisms. The notary must be able to provide a clear explanation to consumers about the processes that must be followed to ensure that the electronic certificate issued is valid and can be accounted for.

Overall, although electronic certificates provide many advantages in terms of efficiency and transparency, the challenges that arise in their implementation require serious attention from the government, supervisory institutions, and parties involved in land buying and selling transactions. To ensure that electronic certificates can function properly as valid evidence, it is necessary to improve the verification system, strict supervision, and educate the public and consumers. With these steps, the digital land system in Indonesia can develop well, provide guaranteed legal certainty for consumers, and reduce the potential for disputes or losses that could arise in land buying and selling transactions.

4. CONCLUSION

The implementation of electronic certificates in land buying and selling in Indonesia is an important step in modernizing land administration. Electronic certificates regulated in ATR/BPN Ministerial Regulation No. 1 of 2021 and No. 3 of 2023 has the legal force equivalent to a physical certificate, as long as it has been legally verified. This digital transformation supports efficiency, security and transparency of land services.

However, implementation still faces challenges, especially regarding verification and accessibility of certificates by consumers. Many consumers cannot verify the authenticity of an electronic certificate directly, especially when buying a house from a developer before the certificate is separated or behind the name. PPJB is often used as the basis for

transactions even though the legal status of the land is uncertain, so consumers are in a vulnerable position if the developer defaults.

Therefore, strict regulations regarding developer obligations, a verification system that is easily accessible to the public, and consumer education are needed. Notaries also play an important role in ensuring legality and bridging consumer understanding of electronic certificates. With strict supervision and collaboration between parties, the digital land system can run effectively, protect consumer rights and create legal certainty.

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Finally, the author realizes that this research still has limitations. Therefore, the author is open to receiving constructive criticism and suggestions to improve future research. We hope that this thesis can contribute to the development of legal studies, especially regarding the protection of consumer rights in the context of digitalization of the land system in Indonesia.

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