

# ELECTRONIC CERTIFICATE AS A MEANS OF LEGAL PROTECTION OF LAND RIGHTS HOLDERS

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**Abstract** - This research aims to analyze the legal strength of electronic certificates produced through the land registration mechanism in Indonesia as proof of ownership of land rights which can provide legal protection to land rights holders. The research method used is qualitative through a normative approach, analyzing legislation, theory, doctrine, and journals to find the legal standing of electronic certificates to sharpen the analysis of the legal standing of electronic certificates that protect the security of land rights. The legal materials used are primary legal materials and secondary legal materials. The results of the research show that electronic certificates as a means of statutory regulations function to prevent land disputes and have main value or advantages compared to analog land certificates so that ownership of land rights becomes safer. On the other hand, electronic certificates have legality as documentary evidence and are oriented towards increasing the economic value of land which repressively protects the interests of land rights holders. Conclusion: The application of electronic certificates as proof of ownership of land is a legal tool that has the legal force to protect the interests of land rights holders.

**Keywords:** rights holder; legal protection; electronic certificate

## INTRODUCTION

Technological progress has an impact on science and human life that cannot be avoided. Various human needs that previously could be fulfilled through manual services are now being replaced by electronic services known as digitalization (Burchanuddin et al., 2023). According to the Big Indonesian Dictionary, digitalization is a process that undergoes a change from analog to digital technology. Public services have evolved using electronic systems that function to provide connected information quickly, easily, and effectively (Zubaidah et al., 2023). One form of digital land service is through the registration of land rights (Shadiq et al., 2023). System transformation through technology is slowly changing the paper-based land registration system which produces analog certificates to an electronic land registration system which produces electronic certificates.

Land registration is a series of continuous activities by the government in the form of data collection, presentation of data in the form of certificates as proof of title, and registration of transfer of rights (Shadiq et al., 2023). Land registration produces a certificate as proof of legal ownership rights as a strong means of proof regarding physical data or objective data and juridical data or subjective data contained therein, as long as it is by the data contained in the land measurement certificate and the land rights book in question (Zubaedah et al., 2023). Since 1960 until now, in Indonesia, the land registration product is still in the form of analog or conventional certificates in the form of paper and sheets (Irfan et al., 2022). Rumors circulating in society and in the media are that analog certificates cause many problems and are unsafe, such as being vulnerable to counterfeiting, being duplicated, land mafia, lost due to natural disasters, and damaged by being eaten by termites (Tira, 2020). The widespread cancellation of land title certificates by the State Administrative Court is due to discrepancies between the certificates and land books and a lack of land history tracing (Tira, 2019).

Analog certificates made of paper are easily counterfeited by individuals and land mafia syndicates, as data presented by the National Land Agency shows that land law issues in Indonesia are characterized by criminal acts of forgery of documents as much as 66%, acts of embezzlement or fraud as much as 16%. To minimize land disputes, land mapping is one of the resolution strategies targeted by the government, although the achievement of the target is still relatively slow (Ramadhani, 2021). The availability of land mapping is a supporting force for improving the legal protection of land rights. One



of the problems with the National Land Agency is the availability of basic maps of land plots as a database (Wadji&Ramadhani, 2022). According to the 2019 ATR/BPN Ministry performance report, the number of registered land plots was 67,345,894 plots (53.45%). Meanwhile, the land base map achievement is still  $\pm 33,972,698.12$  Ha (52.81%). Thus, the achievement of providing basic land maps is still half of Indonesia's territory.

The government's target is that by 2025 all land plots in Indonesia must be certified. No more people own land without a certificate (Yusni&Sigalingging, 2022). This is a challenge for the government in the future through electronic land registration because there are 36 million plots of land that have not been registered and 53 million plots of land that have not been certified (Data from the Regional Office of the Ministry of ATR/BPN South Sulawesi, 2023). To reduce land problems and data security, it is necessary to apply information and communication technology in land registration activities, the Ministry of ATR/BPN plans to replace land certificates in physical form with land certificates in electronic form. To support the use of electronic certificates and electronic documents, the government enacted Law Number 11 of 2008, as amended to Law No. 19 of 2016 concerning Information and electronic transactions. Apart from that, the Ministry of ATR/BPN has also issued a policy or regulation regarding the Issuance of Electronic Documents in Land Registration Activities, namely Minister of ATR/BPN Regulation No. 3 of 2023.

General Provisions Article 1 number 9 stipulates that: "An electronic certificate is a certificate issued through an electronic system in the form of an electronic document whose physical data and juridical data have been stored in the Electronic Land Book (BR-el)". Even though electronic certificate regulations have been implemented since 2021, public acceptance is still hesitant, they do not understand it well, so there are pros and cons, and it has even caused unrest with the spread of information that all analog land certificates will be withdrawn/replaced with electronic certificates (Tjandraningsih, 2023). People who are against it feel doubtful about the security of personal data recorded electronically due to the possibility of personal data being hacked (Mofu, 2023). This is a consideration that influences the delay in the implementation of electronic-based land certificates.

The electronic land certificate policy is new in land registration activities (Pakpahan, 2022). Therefore, before electronic certificates as a result of this digitalization system are implemented by the Ministry of ATR/BPN in Indonesia, an analysis of the legal strength of electronic land certificates as a means of legal protection for land rights holders is needed (Ardian et al., 2022). As technology advances, it is not impossible that electronic certificates can be misused. Cybercrime is spreading in various ways, including hackers trying to obtain immovable property using fake land documents in the digital world (Permadi, 2023). The study of electronic certificates as a new provision for land is more related to legal certainty. The implementation of new electronic certificates in several cities is a pilot project in DKI Jakarta and Surabaya, however, the implementation tends to be closed so the achievements are still difficult to analyze and the implementation still faces obstacles (Liong et al., 2022). Electronic certificates are investment instruments needed to achieve sustainable development goals. However, there has not been much analysis of the legal position of electronic certificates as a means of legal protection for land rights holders so that they can become additional references in land law (Kurniati&Mordekhaj, 2021).

This research is important to carry out considering that the existence of manual certificates has caused many problems caused by conventional land registration mechanisms which have the potential to be involved in the land mafia so the main essence/value that should be fulfilled in certificates as proof of ownership of land rights is not fulfilled optimally (Hapsari et al., 2022). A certificate is a form of recognition of rights, aimed at protecting a person's property rights and having implications for increasing the economic value of land. However, in reality, certificates are still canceled because they have legal defects (Minnon&Israhadi, 2022). Cancellation of land certificates is a sensitive matter in society because it relates to property rights to which a person's honor and dignity are attached. To provide legal protection for land rights holders or land registration purposes, reform of the land registration implementation system is needed (Pertiw, 2022). In this way, the resulting land certificate has true value, namely legal protection for land rights holders. The research aims to determine and analyze the legal position of electronic land certificates as a means of legal protection



for land rights holders (Lin et al., 2020). Practically, it is hoped that it can add references to electronic-based land certificates (Rachmawati et al., 2021).

### METHOD

The type of research used is normative research, to find the position of electronic certificates from a normative perspective. The approach method in this research uses a statutory approach, theoretical approach, concepts, journals, and legal research results. This research examines the substance of research from juridical and philosophical aspects (Madiong, 2023). Sources of legal materials consist of primary legal materials in the form of statutory regulations used such as Laws, Government Regulation No. 24 of 1997, ATR/BPN Ministerial Regulation Number 3 of 2023, and other related regulations. The secondary legal materials used are textbooks and scientific journals that have relevance to the substance of the research. The technique for collecting legal materials is carried out by a literature study. The technical analysis of legal materials uses deductive logic analysis techniques, namely analyzing statutory regulations as a general aspect and then drawing conclusions about the binding strength of electronic land certificates.

### RESULT AND DISCUSSION

Normatively, legal protection for society has been outlined in Article 28 D paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states: "Every person has the right to recognition, guarantees of protection and fair legal certainty as well as an equal treatment before the law". This provision provides a guarantee that society has an equal position before the law. Legal certainty cannot be separated from written legal norms. Laws without certainty cannot be used as guidelines for everyone's behavior because the law will lose value. Legal certainty has two elements, namely normative and empirical. Normatively, it is related to the legal order as a guideline in public relations, while the empirical element is related to the consistent implementation of the law by the government and society. With legal certainty, it will provide legal protection to the community.

Legal protection is a legal instrument that upholds human dignity as a form of recognition of human rights so that legal subjects avoid abuse. Preventive steps must be taken by the government so that the public is protected from things that could harm them due to arbitrary actions and repressive actions as a handling/settlement for unlawful acts that have occurred. The elements of legal protection consist of preventive means and repressive means. Preventive legal protection is a means provided to the public to express their opinions before a government decision takes a definitive form. This facility aims to prevent disputes from occurring (Saribu et al., 2023). Meanwhile, repressive legal protection is a means provided to all communities to exercise the legal rights and interests they have in their position as legal subjects. aims to resolve disputes.

Bearing in mind that in land registration activities the land mafia may be involved before the rights are registered, the land registration committee is obliged to investigate the land history and the material truth of the registration documents submitted by the applicant, so that the land registration data is guaranteed to be correct. Through the land registration process, a certificate is obtained as proof of ownership of a plot of land. A land certificate is a copy of the land book and land measuring certificate, which are bound together with a paper cover and whose form is determined by the Minister. It can be interpreted that a certificate is a letter of evidence or acknowledgment that proves something.

One of the government activities aimed at providing legal protection for community rights is land registration. Land registration is a security measure for holders of land rights from someone's actions that could harm their interests in their land (Ningsih, 2021). Considering the importance of land registration, statutory regulations have given authority to the government, in this case, the Ministry of ATR/BPN) to carry out registration of rights to land and apartments throughout Indonesia. Land registration activities are entrusted to the Ministry of ATR/BPN through Law Number 5 of 1960 concerning Basic Agrarian Principles, known as the Basic Agrarian Law in Article 19 with Government Regulation No. 24 of 1997 concerning Land Registration as technical guidance for implementing land registration.

Land registration comes from the Dutch word "cadaster" which indicates legal information regarding the area and ownership of a plot of land. The meaning of land registration is contained in Article 1 paragraph (1) of Government Regulation No. 24 of 1997 in conjunction with Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats and Land Registration, namely activities carried out by the government continuously, periodically, including collecting, processing, bookkeeping and presenting and maintaining physical data and juridical data in the form of maps and

registration regarding land parcels and apartment units, including the provision of letters and evidence of land parcels that already have rights and ownership rights to apartment units as well as certain burdensome rights.

The purpose of land registration according to Article 3 of Government Regulation Number 24 of 1997 is to provide legal certainty and legal protection to rights holders, provide land information, and maintain orderly land administration (Supriyono, 2022). To achieve this goal effectively, the government plans to replace analog land certificates with electronic land certificates. This government step is an effort to increase the modernization of public services in the land sector, becoming an indicator of the ease of doing business for land rights holders. The electronic land certificate legal system is a glimmer of hope in reducing the number of land disputes and providing legal protection for land rights holders.

### 1. Electronic Certificate as a Preventive Means for Land Disputes

Legal protection can be interpreted as efforts made by the government to realize the legal function. Preventive action is an effort taken before something undesirable happens. At the state level, the stipulation of laws and regulations is a preventive measure against the occurrence of arbitrary actions in society. Land registration activities as a means of preventing land disputes, are not only related to the effectiveness of the implementation of land registration but also include legal regulations and enforcement as a source of binding force for the certificates produced. Normatively, land registration which produces a certificate as proof of rights is regulated through statutory regulations, namely Article 19 paragraph (2) letter c UUPA which confirms that a certificate as proof of rights is valid as a strong means of proof. Article 23 paragraph (2) of the UUPA stipulates that a certificate is a strong means of proof regarding the elimination of property rights and the legality of the transfer and encumbrance of these rights.

A certificate as strong evidence of rights has the legal meaning that the certificate is recognized as valid evidence as long as no other party proves otherwise that the certificate is invalid. The name on the certificate is considered the legal right holder and has legal protection, as long as the certificate is not canceled by a court. Analog land certificates and electronic land certificates have the same function, namely as documents that prove ownership of land rights for a person or group of people. The certificate contains juridical data containing the name of the owner/right holder and the type of land rights, while the physical data explains the location, area, and boundaries of the land. In this way, the certificate guarantees legal certainty of physical data and juridical data (Pasamai, 2023). This means that every person who has a certificate can prove himself to be a legal right holder so that he can avoid land disputes because his land rights are safer from interference by people in the cloth. Therefore, land rights need to be registered to guarantee legal certainty and legal protection for land rights holders.

To minimize land disputes and increase legal protection for land rights holders, electronic land certificates are an alternative government solution. The use of electronic certificates as proof of land rights is stipulated in the Regulation of the Minister of ATR/BPN of the Republic of Indonesia No. 3 of 2023 concerning the Issuance of Electronic Documents in Land Registration Activities whose legal basis refers to Law No. 11 of 2020 concerning Job Creation in Article 147 that: "Proof of land rights, ownership rights to apartment units, management rights and mortgage rights including deeds of transfer of land rights and other documents relating to land which can be in electronic form." The use of electronic certificates is further strengthened through Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions in Article 1 number 9 that an electronic certificate is a certificate that contains an electronic signature and identity which designates the legal subject status of the parties in an electronic transaction issued by the organizer electronic certification."

According to the Regulation of the Minister of ATR/BPN of the Republic of Indonesia Number 3 of 2023, it is explained that an electronic certificate is a certificate issued through an electronic system in the form of an electronic document (Prajaja, 2019). The definition of an electronic document in Article 1 number 2 is any electronic information created, forwarded, sent, received, or stored in analog, digital, electromagnetic, optical, or similar form, which can be seen, displayed, and/or heard via a computer or system. The legal regulations described above are a source of binding force or the basis for the validity of electronic certificates, gradually replacing analog certificates which have weaknesses such as being easily lost, easily damaged, prone to counterfeiting, and the involvement of land mafia (Nakayi, 2023). As a comparison between analog land certificates and electronic land certificates, it is reflected in the transformation of the certificate form as follows:

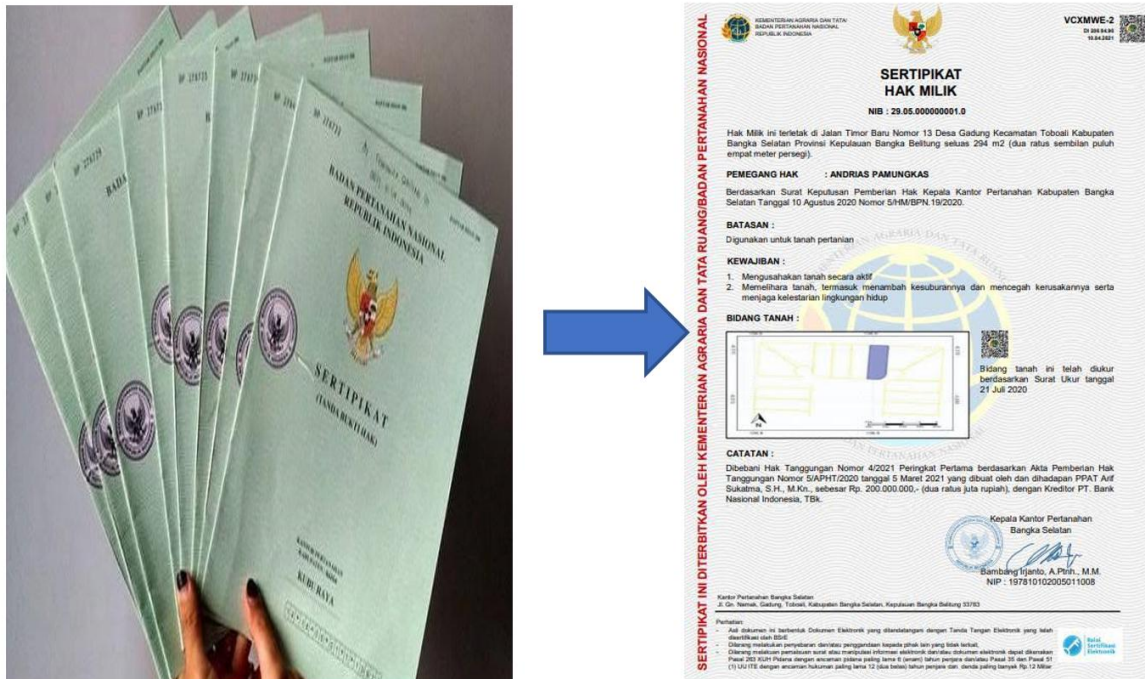


Figure 1. Transformation of the Form of Land Rights Certificate  
Source: Source: Author’s findings

Table 1. Difference between Electronic Certificate and an Analog Certificate

Difference	Electronic certificate	Analog certificate
Document Code	Using Has code	Blank Code
QR Codes	Using QR Codes	Use Scan QR Code
Identity number	Single Identity	Using multiple numbers
Provisions, Obligations, and Prohibitions	State aspects of Right, Restriction, Responsibility	Note in the bookmark column
Signature	Using electronic signatures	Using Manual Signature
Document Form	Electronic documents	Paper Based

Source: Author’s findings

Based on the transformation of the certificate form in the table above, it is analyzed that the electronic certificate is in the form of an electronic document with concise and concise information in the form of a PDF file. The electronic certificate document code uses Has code, which is a unique electronic document code from mathematical calculations that is in the form of random characters by the system so that it is difficult to imitate or fake (Makkawaru et al., 2020). Access certificates using a Quick Response (QR) Code, containing links to directly access electronic documents, making it easier for the public to obtain information. The rights holder’s identity number uses a single identity, using only one number, namely the Field Identification Number (NIB). NIB is a special identification that is unique for all plots of land in Indonesia. NIB is used to protect the security of the rights holder’s identity. Provisions, obligations, and prohibitions are listed on the electronic certificate, namely stating the Right, Restriction, and Responsibility (3R) aspects, namely: provisions, obligations, and prohibitions are included. There is a signature, that is, using an electronic signature that cannot be forged

The characteristic of an analog certificate is that it uses a blank code, namely a unique serial number combined with letters and numbers. Don’t use a QR Code but scan the QR Code. The identity number uses many numbers, namely: Title Number, Measurement Letter Number, Field Identification Number, and Field Map Number. The provisions, obligations, and prohibitions are listed in the indicator column, but they are not uniform for every Land Office. The signature uses a manual signature so it is easy to forge and the document is in the form of paper, namely a blank filled in on several sheets. Looking



closely at the data contained on the electronic certificate, both physical and juridical data, it is clear that the aim is to protect the security of a person's personal data and land rights from interference by other people so that land disputes can be prevented. Protection of land rights is closely related to ensuring the security of public data in land registration activities. To avoid land disputes and misuse of people's data by hackers, the ATR/BPN Ministry will implement multiple layers of security for electronic documents in land registration through supervision by the National Cyber and Crypto Agency. BSSN has the task of implementing cyber security effectively by coordinating all elements related to cyber security.

The decree of the Minister of ATR/BPN No.3 of 2023 is hierarchically one of the statutory regulations. Ministerial regulations are recognized for their existence and have binding force with two conditions, namely that they are governed by higher regulations and are based on authority. ATR/BPN Ministerial Decree No.3 of 2023 is an embodiment of the information, technology, and electronics law. ATR/BPN Ministerial Decree No.3 of 2023 is clearly ordered by law. Meanwhile, in terms of authority to issue decisions, the Ministry of ATR/BPN has the authority because it is by the competence of the duties and functions of the Land Agency. Electronic certificates functionally optimize the use of information and communication technology in land services. The authority of the Ministry of ATR/BPN is called attribute authority, namely authority that originates from statutory orders. The legal certainty of legislation regarding electronic certificates is a means of legal protection for the security of public data and preventing disputes, especially in the land sector. With the existence of statutory regulations and the benefits of electronic certificates obtained by the public through the digitalization system of land registration and electronic land certificates, the legal protection of land rights holders as a means of preventing land disputes can be fulfilled/achieved.

## 2. The development of performance rights can support the cultural tourism industry in Indonesia

Legal protection as a repressive means is an action aimed at restoring harmony that was previously disturbed by an act/violation. According to the Big Indonesian Dictionary, repressive action is one of the characteristics of social control in the form of pressure or restraint to restore a situation that has occurred while a dispute is a dispute that occurs between two parties whose consequences have an impact on both parties. The process of land registration activities as regulated by Government Regulation No. 24 of 1974 concerning Land Registration is a continuous government effort to collect, process, and maintain physical data and juridical data regarding land plots and apartment units as well as the rights encumbering them by issuing proof of rights called a certificate.

Because the certificate is issued by the authorized party, namely the Ministry of ATR/BPN, the certificate has the power of proof as an authentic letter. Thus, electronic certificates issued through the electronic land registration process have the power of proof against third parties in the event of a land ownership dispute. Electronic certificates have the same function as analog certificates in their position as evidence. Proving rights in land ownership disputes in court is a repressive effort carried out by the rights holder to defend his rights from claims by other parties. Holders of electronic certificates are required to obtain legal protection in the form of recognition as legal holders of land rights. By the provisions of Article 23 paragraph (2) UUPA a certificate is a strong means of proof.

The position of electronic certificates as evidence is explained in PP No. 18 of 2021 concerning Management Rights, Land Rights, Flats, and Land Registration that electronic data and information and/or printed results as intended in paragraph (3) are an extension of the instrument. valid evidence by applicable procedural law in Indonesia. The results of organizing and implementing electronic land registration as intended in paragraph (1) are in the form of data, electronic information, and/or electronic documents. This Government Regulation is a follow-up to the provisions of Article 142 and Article 185 letter b of Law No. 11 of 2020 concerning Job Creation. Law No. 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Electronic Information and Transactions confirms that electronic information and/or electronic documents and/or printed results are valid evidence (Zubaidah et al., 2022). Public doubts regarding the security of personal data and the legal certainty of electronic certificates as evidence in the event of a dispute cannot be ignored, even though regulations have been established. In this case, control (repressive) measures are needed from the government so that the use of electronic certificates that are still pending can be accepted and the purpose of their use is understood by the public.

Regarding legal protection for electronic certificate holders, the enforcement or application of the law is determined by the performance of BPN as the land registration organizer. Presenting an innovation in the policy of issuing related electronic certificates such as electronic land certificates which are equipped with hash code security, QR code, and single identity. The application of electronic land certificates is needed at this time, especially the efficiency of land registration at the input, process,


and output stages of the land certification registration process. Through an electronic process, it is also possible to accelerate land registration targets in Indonesia. can increase the value of registering property to improve the Ease of Doing Business (EoDB) ranking," Another aim of issuing electronic certificates is to improve business indicators because many SMEs require collateral for loan funds at banks. However, by switching to electronic certificates, the Land Agency needs to improve Big Data Land Management in an integrated manner and carry out intensive outreach to the community. The transformation of technological advances is changing the land registration system from an analog-based process to an electronic-based service. However, the government must continue to protect land title certificate holders who have good intentions. The state's decision to issue a certificate as proof of land rights must provide legal protection to the community. Electronic land registration and electronic certificates are an effort to control the government over mafia involvement in the issuance and use of analog certificates. The electronic land registration process can speed up the mapping of land plots in Indonesia. In this way, orderly land administration can be achieved, which of course can be correlated with an increase in land value.

## CONCLUSION

The legal strength of electronic certificates comes from government policy in land registration activities through laws and regulations that optimize the use of information and communication technology in land services. This regulation functions as a means of preventing disputes in the land sector. On the other hand, an electronic certificate is an authentic letter that has binding force as proof of ownership of land which functions as a repressive means in the event of a land dispute, so that land rights holders feel safe because they receive legal protection.

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