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## Legal Problems of Regulation of Electronic Land Certificates In the Legislation System in Indonesia

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**Abstract**

The digitalization of legal products continues to develop as an effort to provide convenience and transparency of public services, as well as certificates of land rights as proof of land registration rights in the form of paper (land books) or analogues based on Law no. 5 of 1960 concerning Agrarian Principles and Government Regulation no. 24 of 1997 concerning Land Registration, with the issuance of Law no. 11 of 2020 concerning Job Creation provides legal norms for electronic certificates of land rights which are regulated by Permen ATR/BPN No. 1 of 2021 concerning Electronic Certificates, so that with the new regulation, land registration products are in the form of electronic (e-certificates), to the significant difference in the form of the certificate, there are legal issues regarding the position of the Job Creation Law, Permen ATR/BPN No. 1 of 2021 with the UUPA and PP No. 24 of 1997 in the legal system in Indonesia. This research is normative juridical with a statutory and conceptual approach. ATR/BPN Ministerial Regulation No. 1 of 2021 concerning Electronic Certificates based on Law no. 12 of 2011 its position is under PP No. 24 of 1997 so that according to the principle of *lex superiori derogate legi inferiori* the provisions of the Ministerial Regulation as long as it regulates land registration may not conflict with a Government Regulation which has a higher legal degree. Land registration norms are regulated in the UUPA and PP No. 24 of 1997, while the Job Creation Act and ATR/BPN Regulation No. 1 of 2021 is not a legal norm that regulates land registration but as a new norm regarding the granting of land rights in the form of electronic certificates as evidence of the election of land rights.

**Keywords**

land registration; electronic certificate; legal problems; analog certificate

### I. Introduction

The industrial revolution 4.0 occurs along with the transformation of a aspects of industrial production through the incorporation of digital technology and the internet with conventional industry, the development of science, technology, information and communication in modern society cannot be separated from electronic devices such as laptops, computers, gadgets, television, radio and so on. etc. This development provides tremendous benefits to the community with various aspects of life, one of which is by creating digital based public service innovations. One form of this service is to change the form of manual (analog) services to digital services in the form of electronic certifi

cates, both in the field of taxation with e-taxes, e-billing, in the field of population with e-ID cards, e-commerce in the field of trade, e-government in the field of government, e-court in the field of justice, and in the field of licensing with the Online Single Submission (OSS) system or other fields that have implemented electronic certificate services in the form of electronic signatures and identities that indicate the status of the legal subjects of the parties in electronic transactions.

The phenomenon of the 4.0 industrial revolution is the changing lifestyles of society and the emergence of the phenomenon of online shopping has eroded the modern retail market, so that the influence is slowing growth in modern retailing. In the era 4.0 industrial revolution, the most popular technology in business is information technology (IT) with digital technology and internet will be the basis of revolutionary change in all industries. (Kusumadewi, R and Karyono, O. 2019)

These technological advances have finally shifted government services in the land sector from a manual system to a digitalization system, including a land registration system that was previously paper based, now turned electronic based, electronic services in the land sector have actually been implemented since 1997 through the Land Office Computerization (LOC) program, and then became computerized. Land Activities (KKP), from this KKP then transformed into a web based application / KKP web. Among these services are in the form of information on Land Value Zone (ZNT), Checking Certificates, Certificate of Land Registration (SKPT) and electronic Mortgage Rights.

After the enactment of Law No. 11 of 2020 concerning job creation, in which there are provisions that state proof of and right slownd or apartment units, management rights and mortgage rights including deed of transfer of and rights and other documents related to land can be in electronic form, the provisions are then elaborated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 1 of 2021 concerning Electronic Certificates, thus giving rise to a new legal product in the form of an electronic land title certificate.

Normatively, the issuance of this Ministerial Regulation is actually a followup to Presidential Regulation Number 86 of 2020 concerning the Government's 2021 Work Plan, which has the theme of accelerating economic recovery and social reform as an effort to prepare work plans in the era of the COVID-19 pandemic.

In the consideration of Permen ATR/Head of BPN No. 1 of 2021 states that the reason for the existence of electronic certificates is to realize the modernization of land services in order to improve indicators of ease of doing business and public services to the community, so it is necessary to optimize the use of information and communication technology by implementing electronic based land services, so that the birth of electronic certificates is one of the basics to provide convenience business and public service.

Changes in land certificates in the form of analog to electronic certainly bring many consequences including changes in and registration regulations which were previously regulated by legal products whose degrees are higher than just Ministerial Regulations, namely in the form of Government Regulation Number 24 of 1997 concerning Land Registration as a legal product implementing provisions. Land registration as regulated in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA). When Permen ATR/Head of BPN No. 1 of 2021 is argued to be the executor of the

provisions of Article 174 of Law no. 11 of 2020 concerning Job Creation will raise the problem of whether the provisions in the Job Creation Act according to legal principles automatically revoke the provisions in the UUPA and whether Permen ATR/BPN No. 1 of 2021 replacing PP No. 24 of 1997

Based on this background, this research focuses on the following problems:

How is the position of the Minister of ATR/Head of BPN No.1of 2021 concerning Electronic Certificates with Government Regulation Number 24 of 1997 concerning Land Registration in the Indonesian legal system.

## **II. Research Method**

In this study, researchers used normative legal research, namely research that puts law as a system of norms, namely regarding principles, norms, laws and regulations, court decisions, agreements and doctrines (teachings) using a statutory approach, conceptua approach, as well as with primary legal materials in the form of related legislation such as Law Number 5 of 1960, Law Number 11 of 2020, Law Number 12 of 2011, Government Regulation Number 24 of 1997 and Regulation of the Minister of ATR/Head of BPN No. 1 of 2021 with secondary legal materials, namely legal materials that provide further explanations regarding primary legal materials taken from relevant literature, journals and research results obtained from central research.

## **III. Result and Discussion**

Etymologically, the certificate comes from the Dutch language, namely 'certificat' which means a letter of evidence or a certificate that proves about something, so that if it is juxtaposed with land it becomes a certificate that proves a person's right to a piece of land, or in other words the situation states that there is someone who owns certain plots of land and the owner has strong evidence in the form of a letter made by the competent authority, so that the certificate is useful as evidence, the evidence of which is administered by the State. All title certificate is a proof of land that has been registered and registered by an official body which is legally carried out by the state on the basis of law. With the issuance of certificates as proof of rights, legal protection is realized for certificate owners or land rights holders, namely getting a sense of security, comfort and not getting interference or lawsuits from other parties. This legal protection is realized if there is no juridical defect in the issuance of the certificate, namely, procedural defects, substance defects or authority defects. Meanwhile, the nature of proof of certificate as proof of rights is related to the publication system in land registration.

The issuance of the certificate is a series of a and registration process, which is regulated and defined in Article 1 point (1) Government Regulation Number 24 of 1997 which states that land registration is a series of activities carried out by the government continuously, continuously and regularly, including collection, processing, bookkeeping, and presentation and maintenance of physical data and juridical data, in the form of maps and lists, regarding land parcels and apartment units, including

the issuance of certificates of proof of rights for land parcels with existing rights and property rights on the apartment unit and certain rights that burden it. From these provisions it is very clear that the final result of the land registration process is in the form of proof of rights in the form of a certificate. As for the certificate itself, Article 1 number (20) defines it as "a certificate of proof of rights as referred to in Article 19 paragraph (2) letter c of the BAL for and rights, management rights, waqf land, property rights to flat units and dependents, each of which has been recorded in the relevant land book.

The purpose of land registration law is to realize legal certainty, while the holding of *rechten* land registration based on Article 19 paragraph (1) of Law no. 5 of 1960, that "To guarantee legal certainty by the government, and registration is held throughout the territory of the Republic of Indonesia according to the provisions regulated by government regulations". The implementation of land registration is carried out by the National Land Agency (BPN), which is the agency or official as the executor of the land office as per Government Regulation Number 24 of 1997 concerning and registration.

With the promulgation of PP No. 24 of 1997 then the provisions on and registration in PP no. 10 of 1961 is declared no longer valid, even though it is declared invalid but all legal products that have been produced are still valid, in Article 64 PP No. 24/1997 stipulates that all laws and regulations implementing PP No. 10/1961 remains in effect, as long as it does not contradict or be changed or replaced based on the new regulations. Reason for PP No. 10/1961 was amended because the government regulation was not sufficient to provide satisfactory results, lack of budget, tools and human resources as well as the objective condition of the lands and there were no legal provisions as a basis for implementing land registration quickly and satisfactorily.

In the legal arrangement regarding certificates based on PP no. 24/1997 clearly states the phrase 'evidence letter' which means that the legal product as a result of land registration is in the form of a letter which means it is in analog or physical form, while in Article 2 paragraph (1) Ministerial Regulation of ATR/BPN Number 1 of 2021 concerning electronic certificates it is stated that the implementation of land registration can be carried out electronically. Therefore, the provisions related to electronic certificates will also affect the series of land registration processes as regulated in PP No. 24 of 1997.

Issuance of electronic certificates is included in the legal regime of land registration regulated in PP no. 24 of 1997, namely Article 31 paragraph (6) which states that the form, content, method of filling out and signing the certificate are determined by the Minister. The Minister referred to in this provision is the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency, while the Minister of ATR/BPN has issued Ministerial Regulation of ATR/BPN No. 1 of 2021 concerning Electronic Certificates.

Legal basis for holding electronic certificates The basis in the Ministerial regulation is Law Number 11 of 2008 concerning Electronic Information and Transactions, namely in article 5 paragraph (1) which reads: "the operation of the electronic system is protected and recognized by law", and Article 147 of Law no. 11 of 2020 concerning Job Creation which states: "Proof of land rights, rights to flats, management rights, and mortgage rights, including deed of transfer of land rights and other documents related to land can be in electronic form", then clarified in article 175 point 3, which reads:

“(1). Officials land/or Government Agencies may make decisions in electronic form;(2). Decisions in electronic form must be made or submitted against decisions processed by the electronic system determined by the central government; (3). Decisions in electronic form have the same legal force as written decisions and are effective from the date the decision is received by the party concerned; (4). In the event that a decision is made electronically, it is not made in writing.”

There are several legal problems in the issuance of Permen ATR/BPN No. 1 of 2021, especially in the matter of the legal system in Indonesia, is the legal product of Permen ATR/BPN 1 of 2021 applicable as the implementer of Government Regulation No. 24 of 1997, or is this Ministerial regulation a new legal norm regarding and registration? and regulate about electronic certificates. To be able to answer these problems, in the analysis of the contents of the Ministerial Regulation ATR/BPN No. 1 of 2021, considering number 6 mentions Government Regulation No. 24 of 1997, while in Chapter I Article 1 number 7 defines a certificate with the same definition as regulated in PP no. 24 of 1997, and in number 8 there is a definition of electronic certificate, here in after referred to as e certificate, is a certificate issued through an electronic system in the form of an electronic document.

Substantially, and registration in the implementation of the electronic and registration system is mentioned in Article 2 paragraph (1) the implementation of and registration can be carried out electronically, (2) the implementation of electronic land registration as referred to in paragraph (1) includes a). Land registration for the first time, and b). Maintenance of land registration data. (3). the and registration as referred to in paragraph (2) is carried out through an electronic system. From these provisions it is very clear to change the provisions of land registration in PP no. 24 of 1997, substantively product certificates resulting from Ministerial Regulation ATR/BPN No. 1 of 2021 is in the form of an electronic certificate while the legal product of the and registration process in PP No. 24 of 1997 is a certificate book in the form of physical analog.

From this it cannot be concluded simply that the issuance of Permen ATR/BPN No. 1 of 2021 as the executor of PP No. 24 of 1997 by only referring to the provisions of article 31 paragraph (6) because it is substantially different from the meaning contained in Government Regulation No. 24 of 1997, because the main legal source in land registration is Basic Agrarian Law and its implementing regulations. Meanwhile, the Information and Electronic Transaction Law and the Job Creation Act are not land law regimes that regulate land registration.

When examined in terms of the degree or level of legislation using the theory of hierarchy, which is a theory that states the legal system is arranged in stages and levels like stairs. The relationship between the norms that govern the actions of other norms and other norms is referred to as the super and subordination relationship in the spatial context. The norms that determine the actions of other norms are superior, while the norms that carry out the actions are called inferior norms. Therefore, the actions carried out by high norms (superior) are the reason for the validity of the entire legal system that forms a single unit.

In this chain of legal norms, Indonesia has actualized it into the hierarchy of laws and regulations as regulated in Law Number 12 of 2011 concerning the establishment of laws and regulations, which are detailed in article 7 paragraph (1) by mentioning the types and hierarchies of laws and regulations in Indonesia, namely (1). 1945 Constitution, (2). Decree of the People's Consultative Assembly, (3). Laws

/Laws/Government Regulations in Lieu of Laws, (4) Government Regulations, (5). Presidential Regulation, (6). Provincial Regulations, and (7) Regency/City Regional Regulations.

Ministerial Regulation (Permen ATR/BPN No. 1 of 2021) according to article 7 paragraph (1) of Law no. 12 of 2011 the degree is very far from the Government Regulation (PP. No. 24 of 1997), so that according to the legal principles of the Whereas the higher rules override all lower regulations (the principle of *lex superior derogat legi inferiori*), when examined from a substance perspective, if the lower laws and regulations conflict with those above, then these regulations can be demanded to be canceled or null and void (by law) *van rechtswegen*.

The hierarchy of laws in Indonesia is legal in solving problems in the field of law in order to create justice and legal certainty, because the existence of a hierarchy of laws in Indonesian constitutional life is all system to maintain consistency and adherence to the principles of positive law in Indonesia.

The Ministerial Regulation in Law Number 12 of 2011 is not regulated in Article 7 paragraph (1), but the existence of this type of regulation is regulated in Article 8 paragraph (1) which affirms: "Types of legislation other than those referred to in Article 7 paragraph (1) includes regulations stipulated by the People's Consultative Assembly, the People's Representative Council, the Regional Representatives Council, the Constitutional Court, the Supreme Audit Agency, the Judicial Commission, Bank Indonesia, the Minister, agency, institution, or a commission of the same level established by law or the government on the orders of the Act, the Provincial Regional People's Representative Council, the Governor, the Regency/City Regional People's Representative Council, the Regent/Mayor, the Village Head or an official at the same level". From the phrase of regulation which is determined by the Minister, it reflects the existence of a Ministerial Regulation as one type of legislation.

Regulation of the Minister of ATR/BPN No. 1 of 2021, according to Article 8 paragraph (2) of Law No. 12/2011, its existence is recognized and has binding legal force as long as it is ordered by a higher Legislation or formed based on authority. There are two doctrines of authority in legislation, namely the authority to form, namely legislation formed on the basis of attribution of formation of legislation and delegation of formation of legislation. When viewed contextually Permen ATR/BPN No. 1 of 2021 on the basis of consideration (considering) mentions the Basic Agrarian Law and its implementing rules and is related to the Information and Electronic Transactions Law, and the Job Creation Law, so contextually the formation of the regulation was formed by order of a higher regulation, if examined in terms of authority, the Ministry of ATR/BPN has attributive authority, namely the authority that has been determined or follows the provisions referred to in the preamble and remembers in the ministerial regulation, but substantively the ministerial regulation contradicts the contents of the UUPA and PP no. 24 of 1997 concerning Land Registration.

The substance of land registration in Indonesia is regulated in the UUPA which with the implementing regulations of PP no. 24 of 1997, while the ITE Law regulates electronic certificates and electronic transactions, Article 147 of the Job Creation Law is not a norm that regulates land registration, but concerning the granting of and rights/management rights in the above ground and basement spaces (paragraph 4 of the Employment Creation Law on Land), as well as the provisions in Article 174 point 3 of the Job Creation Law, are not norms regarding land or land registration, but are legal norms governing the implementation of government administration to support job creation.

The application of legal principles in the form of the principle of *exspecialis derogat legi generali* which means the principle of legal interpretation which states that special laws (*lex specialis*) override general laws (*ex generalis*), which means special laws nullify general laws, because special rules are more relevant and compatible and more in line with legal needs, so that when there are regulations regulated in general provisions and also regulated in special provisions, here is a conflict of norms that must be resolved, in the context of land registration and certificates as proof of rights. in the Job Creation Law and the Information and Electronic Transaction Law, it is not a special rule regarding land registration as regulated in the Basic Agrarian Law.

Electronic certificates can become a new legal norm to replace analogue and rights certificates, by being regulated in the Job Creation Law and the Electronic Information and Transaction Law with reference to the *ex posterior derogate legi priori* principle, which means the new law nullifies the old law. norms This can be used because the new legal norms and the old ones are equal, because the relationship between norms is a relationship between superordination and subordination where the validity of lower norms always comes from higher norms.

From the perspective of science legislation, especially in relation to statutory regulations as legal norms that are hierarchical in nature where lower legal norms seek their validity on higher legal norms as stated by Hans Kelsen. Regulation of the Minister of ATR/BPN No. 1 of 2021 with all the arguments and hierarchical problems, whether it was formed on the basis of orders from higher laws and regulations or those formed on the basis of authority in the field of certain government affairs that existed at the Minister, qualified as legislation shrimp. Thus, the Ministerial Regulation has legal force that is binding on the general public and can be used as an object of judicial review at the Supreme Court, if it is deemed to be contrary to the Law, or the legislation above.

#### IV. Conclusion

Certificates of land rights in the form of analogues or and book papers are authentic evidence of and objects that have been registered to provide legal certainty to rights holders, as stipulated in Article 19 paragraph (1) of Law Number 5 of 1960 concerning Agrarian Principles and Regulations Government Number 24 of 1997 concerning Land Registration. Article 147 of Law no. 11 of 2020 concerning job creation creates a new norm regarding electronic certificates (e certificates) which are further regulated in the ATR/BPN Ministerial Regulation No.1 of 2021 concerning Electronic Certificates because previously electronic certificates did not exist in the land registration regime in Indonesia.

ATR/BPN Ministerial Regulation No. 1 of 2021 was issued based on the attributive authority attached to the Ministry of ATR/BPN as a follow up to Law No. 11 of 2020 concerning Job Creation, but based on the principle of *lex specialis derogat legi generali*, it is not a specialist legal norm that regulates land registration, but is more likely as a norm. The new law is based on the principle of *ex posterior derogate legi priori*, although the norm does not regulate land registration but regulates the issuance of electronic certificates as proof of land ownership. Against ATR/BPN Regulation No. 1 of 2021 which is attributive authority and its formation is based on Law no. 12 of 2011 is legal as a



lega products that if the substance is not appropriate, aljudicia review can be submitted to the Supreme Court.

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