

Urgence and Security of Digitalization of Land Electronic Certificate Issuance Documents

Nur Rohman^{1*} 

¹Law Faculty, Islamic University of Indonesia, Yogyakarta, Indonesia

*Corresponding author: bungrohman16@gmail.com

Abstract

This study aims to determine the urgency and how to regulate personal data protection and security for the issuance of electronic land certificates. The author concludes first, that the regulation of personal data protection has been regulated through the 1945 Constitution of the Republic of Indonesia and other laws and regulations. However, there is no law that specifically regulates the protection of personal data. Currently the Personal Data Protection Bill has been included in the 2022 *Prolegnas*. Regarding the security of electronic land certificates, the Ministry of ATR/BPN RI has implemented several security measures, but the potential for personal data leakage still exists. Second, the policy for issuing electronic land certificates is currently not urgent to implement. This is based on the first, the lack of socialization of the policy to the public. Second, it is still prone to leaks of personal data. Third, there are still many unresolved agrarian conflicts, one of the causes of which is related to the overlapping of land ownership rights. So the author suggests first to immediately ratify the Personal Data Protection Bill so that the legal umbrella is clearer. Second, urging the government to immediately resolve existing agrarian conflicts and complete the land certification program first through *PTSL*.

Keywords: Urgency; Protection; Personal Data; Electronic Certificate; Land.

History:

Received: February 15th 2022

Accepted: April 16th 2022

Published: July 3th 2022

Publisher: Universitas PGRI Madiun

Licensed: This work is licensed under

a [Creative Commons Attribution 3.0 License](https://creativecommons.org/licenses/by-sa/4.0/)



Introduction

Land Ownership Certificate (*SHM*) is a physical document that is very valuable to the community. One of the functions of the document is to provide legal certainty of ownership of a plot of land. In addition, the *SHM* document becomes a strong evidence when proving in court in the event of a dispute over a plot of land. Juridically, the land registration process until the issuance of the land title document is regulated through Government Regulation Number 24 of 1997 concerning Land Registration which was later amended by Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats and Land Registration.

On January 12, 2021, the Ministry of Agrarian and Spatial Planning/Head of the Indonesian National Land Agency issued the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the Indonesian National Land Agency Number 1 of 2021 concerning Electronic Certificates. Based on these regulatory considerations, the reason why it is necessary to regulate electronic land certificates is to provide convenience for the community and business actors in an effort to optimally provide public services through the use of technology, information and communication. In addition, it is also due to the slow

process of documenting land certification in Indonesia. The process of implementing land registration until the issuance of land certificates in Indonesia has been running for approximately 61 years. However, only about 82 million land parcels have been registered or have land certificate documents out of a total of approximately 126 million lands. So there are still around 35% of land that does not have a certificate document (Fadli, 2020).

The issuance of these regulations became a polemic in the community. Precisely in the section that regulates the change of analog certificates into electronic certificates. The polemic is inseparable from the validation and guarantee of the security of one's personal data against the issuance of electronic certificates. In 2020 (M. Sholeh, n.d.) there were 3 (three) cases of personal data leaks, namely in Tokopedia as many as 91 million leaks, Bukalapak 13 million leaks. In the government sector, there is also a data leak of 230 thousand data on Covid-19 patients. Meanwhile, in 2021 there will be at least 2 (two) cases of personal data leakage. First (Persada, 2021) the leak of personal data at the Social Security Administering Agency (BPJS Kesehatan), about 279 million data of Indonesian people who participate in BPJS Health were leaked and traded on the *raidsforum.com* page. The leaked and traded information data includes data on population identity, telephone numbers, and salaries. Second (Budiman, 2021) leaks that occurred to BRI Life customers. At least about 2 million BRI Life customer data with a value of \$7,000 or around Rp. 101.6 million. In addition, there were 463,000 letters traded. The data traded include account numbers, taxpayer numbers, medical records, and customer birth certificates.

In addition to the problem of protection and security of personal data, the second problem is that there are still many unresolved agrarian conflicts. According to the Agrarian Reform Consortium (Agraria, 2020) in 2020 there were 241 cases in 359 regions throughout Indonesia, with 135,332 heads of family victims. This note shows that agrarian conflict is a structural problem and the resolution process takes a long time. One of the causes of agrarian conflicts is the overlapping of land ownership as evidenced by the basis of the ownership rights, namely the land title document. Legally, it is a strong and perfect evidence in positive law in Indonesia.

Based on the description above, it is interesting to study and research about the urgency of digitizing the electronic land certificate document and how to guarantee the security and protection of personal data for the electronic land certificate.

Materials and Methods

This type of research is empirical legal research, to find out how to regulate and guarantee the security of personal data for the issuance of electronic certificates and how urgent the policy is. The approach method used in this research is the juridical approach and the case approach. The juridical approach is carried out by reviewing all laws and regulations related to the legal issues being faced. While the case approach is used to build legal arguments in the perspective of concrete cases that occur in the field, of course these cases are closely related to legal cases or events that occur in the field. Data collection is done by literature study, namely studying materials which are secondary data, by exploring principles, norms, rules from laws and regulations, as well as doctrines or legal teachings.

Results and Discussion

1. Regulation of Personal Data Protection and Security Guarantee Against the Issuance of e-Certificate of Land in Indonesia.

Several countries in Europe have made arrangements regarding personal data, namely through The EU General Data Protection Regulation (GDPR). This is due to the widespread leakage of personal data in cyberspace. According to the GDPR, what can be said as personal

data is that it includes several things such as names, identification numbers such as identity card numbers, location data, physical, genetic, economic, cultural and other social identity data which essentially indicates the identity of a particular person. Several countries in the Asian region such as Taiwan, Japan, the Philippines, Singapore, Malaysia and Thailand have adopted GDPR (Rahmatullah, 2021).

Whereas in Indonesia, the definition of personal data can be found through Article 1 number 1 of the Regulation of the Minister of Communication and Information Technology Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems explaining that what is meant by personal data is certain personal data that is stored, maintained and kept true and confidentiality is protected. More details related to the criteria for personal data can be seen in Article 58 paragraph (2) of Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration, which states that individual data includes, namely, Family Card (*KK*) numbers. Citizens Identification Number (*NIK* in Indonesia), full name, gender, place of birth, date/month/year of birth, blood type, religion/belief, marital status, relationship status in the family, physical and/or mental disability, latest education, type of work, *NIK* of biological mother, name of biological mother, *NIK* of father, father's name, previous address, current address, ownership of a birth certificate or birth certificate, birth certificate number/birth identification number, ownership of a marriage certificate or marriage book, marriage certificate number /marriage book, date of marriage, ownership of divorce certificate, number of divorce certificate/divorce certificate; divorce date, fingerprint, iris, signature, and other data elements that constitute a person's disgrace.

Meanwhile, regarding the regulation of personal data protection in Indonesia, it can be seen through Article 28 G paragraph (1) of the 1945 Constitution of the Republic of Indonesia. It is also stated in Article 14 paragraph (2), Article 29 paragraph (1), and Article 31 of Law Number 39 1999 concerning Human Rights. In essence, some of these articles state that a person's personal data must be protected and its confidentiality guaranteed, because personal data is a human right of citizens that must be protected by the state. The affirmation of the guarantee and protection of personal data by the state has become clearer with the ratification of Law Number 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights (Ilhafa et al., 2021).

In addition, it is also spread in several laws. For example, Law Number 10 of 1998 concerning Banking regulates personal data regarding depositors and their deposits. Law Number 36 of 2009 concerning Health regulates the confidentiality of the patient's personal condition. Law Number 36 of 1999 concerning Telecommunications, Law Number 23 of 2006 concerning Population Administration (amended by Law No. 24 of 2013) and Law Number 11 of 2008 concerning Information and Electronic Transactions (amended by Law Number 19 of 2016), as well as Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions (Rosadi and Pratama, 2018).

According to Edmon Makarim, there are 3 important principles related to privacy or personal rights, namely (Edmon Makarim, 2010):

- a. Every human being has the right not to be disturbed, in relation to his personal life.
For example, his life is not disturbed by other people
- b. Has the right to relate to the secret of some sensitive information relating to him
- c. The right to control his personal data held by other parties

This is also regulated through the explanation of Article 26 paragraph 1 of the Regulation of the Minister of Communication and Information Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems. So that the act of dissemination, hacking, misuse of personal data is an act that is illegal or against the law and violates the principles of human rights. Because it relates to the freedom to give or refuse

someone's personal data. Meanwhile, with regard to sanctions for theft of personal data, it is regulated through several laws and regulations, namely Article 26 paragraphs (1) and (2) of Law Number 11 of 2008 concerning Information and Electronic Transactions (*ITE Law*) as amended by Law No. Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions. In essence, everyone who is harmed because their personal data is leaked or stolen can file a lawsuit for the loss to the District Court. This is also emphasized in Article 32 of the Regulation of the Minister of Communication and Information Technology Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems. Based on this regulation only apply administrative sanctions.

Meanwhile, if referring to Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions, the policy of theft of personal data by way of being misused is contained in Article 15, Article 16, and Article 17. The policy to prevent personal data being stolen is based on Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions, namely through deletion, and deletion is divided into 2 (two) types, namely deletion (right to delete) and deletion from search engine lists (right to delete) this is based on court decisions regarding electronic information and/or files electronics (Widiantari, 2021).

This means that in general terms related to the principle of protecting human rights, especially regarding personal data, it has been regulated in the Indonesian constitution, the 1945 Constitution and other laws and regulations that are spread through several laws. However, indirectly Indonesia does not yet have a law that specifically regulates the protection of personal data. In the 2022 National Legislation Program (*Prolegnas*) there is already a bill on the protection of personal data. With the inclusion of the Personal Data Protection Bill into the National Legislation Program, it is hoped that it can complete the deficiencies in the Law that previously regulated personal data. In addition, it is also expected to obtain maximum legal certainty, considering that currently there are so many cases of personal data leakage.

To maintain the security of personal data, especially related to the issuance of electronic land certificates, the Ministry of *ATR/BPN RI* has implemented several security options. First, implementing the ISO 27001 2013 security system, which is a security system with information management that ensures that all processes are carried out in accordance with risk analysis and mitigation based on International Best Practice. Second, in addition, electronic certificates also apply 2 factor authentication and electronic signatures that use a certificate authority by the Electronic Certification Agency (*BSRE*). Third, the electronic land certificate is also equipped with hash code, QR code and single identity security as a substitute for paper-based conventional land certificates. Fourth, *ATR/BPN* digital data is used in an encrypted model and regularly backed up in the data center (Fadli, 2021).

Of course, if you look at the security system and personal data protection described above, it is possible that there will still be leakage of personal data and breaking into the security system by irresponsible people. This refers to examples of cases that have occurred. So that the digitalization of electronic certificates is very vulnerable about security and personal protection. Given the current era of technology and information, personal data is a very valuable asset. So that its security must be completely protected from cyber crime attacks.

Although the Ministry of *ATR/BPN RI* has provided an alternative for the protection and security of personal data, especially related to electronic land certificates, it does not rule out the possibility that the threat of personal data leakage still exists. Recalling the cases that had previously happened. In addition, of course, it is very important for the government and

the Indonesian House of Representatives to immediately ratify the Bill on Personal Data Protection as a legal umbrella and to complete the protection of personal data that has been regulated in the previous law.

2. Urgency of Issuing Electronic Land Certificates in Public Services

Public service is an effort made by a person or group or agency in facilitating and providing assistance to the community in order to realize the planned goals (Nashudin, 2016). Meanwhile, Moenir defines service as activities carried out by individuals or groups of people on a certain basis, which can only have an impact on people who feel they are serving or being served, based on the capacity of service providers to fulfill service users (Djafri, 2018).

In providing public services, the Ministry of *ATR/BPN* utilizes technology and information to make it easier to provide services to the community. There are several digitization of public services that have been carried out, including mortgage rights which include registration, transfer, deletion, name change, and data correction. Land value zone (ZNT), checking land certificates, and land registration certificates (SKPT). Then in the service of mortgage rights electronically (HT-el). In addition, the Ministry of *ATR/BPN RI* digitizes land certificates from analogue certificates to electronic land certificates through Regulation of the Minister of *ATR BPN RI* Number 1 of 2020 concerning Electronic Certificates.

Efforts to digitize land registration services have actually been planned long ago. This can be seen through Article 36 paragraph (5), paragraph (6) and paragraph (7) of Government Regulation Number 24 of 1997 concerning Land Registration, which essentially states that the registration process, document maintenance and presentation must use electronic equipment. Unfortunately, this provision is only limited to the maintenance process, not at the stage until the issuance of the electronic land certificate product. It was only in 2021 that the government issued a regulation that specifically regulates the issuance of electronic certificates, namely through the Regulation of the Minister of *ATR/BPN RI* Number 1 of 2021 concerning Electronic Certificates.

As the author has described above, before the effort to digitize public services, especially related to the issuance of electronic land certificates, there are still some unresolved problems. The first relates to the protection and security of personal data. Second, there are still many agrarian conflicts in Indonesia that have not been resolved. The rampant agrarian conflicts that occur also have an impact on access or distribution of social justice, especially with regard to ownership or control of land. In 1963, the inequality in the Gini ratio reached 12.9 million hectares of land controlled by 12.2 million farming households, which was 0.55, which means that the level of concentration of land tenure is very high (Bachriadi and Wiradi, 2011). Meanwhile, in 2021 inequality in land ownership or tenure is still high. This is based on the Gini Index, the ratio of land ownership which is at 0.54-0.67 (Kusuma, 2020). Not only that, one of the many inequalities in land ownership is also the role of government agencies that still maintain sectoral egos in determining equitable ownership and use of land. (Utomo, 2021)

The issuance of Regulation of the Minister of *ATR/BPN RI* Number 1 of 2021 concerning Electronic Certificates has become a polemic in the community. According to Dewi Santika as Secretary General of the Agrarian Reform Consortium (Wibowo, 2021) there are several things that caused this. First, the electronic certificate policy is not maximally disseminated to the public. Second, the government already has a simultaneous land registration program (*PTSL*). In the context of the issuance of land certificates, the government should be more focused and complete the program.

So, according to the author, based on the explanation above, the policy for issuing land electronic certificates is currently not urgent to implement. Given that there are still many

people in the area who are not ready for this, it is also related to technological literacy which is still not evenly distributed in society. In addition, in the land registration process, the output of which is the issuance of the land certificate, there are several requirements, one of which is a statement that the land under control is not in dispute. Which means that based on the data from the *KPA*, the most important or urgent issue at this time is the government's efforts to resolve the existing agrarian conflicts first.

So that in the current era of technology and information it becomes a necessity for the bureaucracy, let alone public services, to adapt to the conditions of the times. Digital transformation in the context of issuing electronic land certificates currently needs to be done. However, what is more urgent or urgent to do is to resolve the agrarian conflict first. It also makes it easier to certify electronically. Considering that the condition for issuing an electronic land certificate is that there is no dispute over the parcel or land.

Conclusion

Based on the description above, the writer concludes that the regulation of personal data protection has been regulated through the constitution of the 1945 Constitution of the Republic of Indonesia and other laws and regulations. However, there is no law that specifically regulates the protection of personal data. Currently the Personal Data Protection Bill has been included in the 2022 *Prolegnas*. Regarding the security of electronic land certificates, although the Ministry of ATR/BPN RI has implemented several security measures, the potential for personal data leakage still exists.

In the author's opinion, for now, the policy for issuing electronic land certificates is not urgent or urgent to implement. This is based on several things, namely the first lack of socialization of the policy to the public. Second, it relates to the protection and security of personal data against the issuance of electronic land certificates. Third, there are still many unresolved agrarian conflicts, one of the causes of which is the overlapping of land ownership rights. Thus, the author suggests first to immediately ratify the Personal Data Protection Bill so that the legal basis is clearer. In addition, the government must maximize land certification first as this has become a program but has not been completed and urges the government to immediately resolve agrarian conflicts and complete the *PTSL* program first.

Acknowledgments

Thank God Almighty, Lecturers, and our colleagues at work and on campus who have supported the completion of this paper.

References

- Agraria, K. P. (2020). Catatan Akhir Tahun 2020 Konsorsium Pembaruan Agraria. *Paper Knowledge . Toward a Media History of Documents*, 20.
- Ardiansyah Fadli. (2020). *Baru 82 Juta Bidang Tanah Tersertifikasi*. Kompas.Com. [https://properti.kompas.com/read/2020/12/10/164926321/baru-82-juta-bidang-tanah-tersertifikasi#:~:text=%22Ada sebanyak 82 juta tanah,10%2F12%2F2020](https://properti.kompas.com/read/2020/12/10/164926321/baru-82-juta-bidang-tanah-tersertifikasi#:~:text=%22Ada%20sebanyak%2082%20juta%20tanah,10%2F12%2F2020)).
- Ardiansyah Fadli. (2021). *Pemerintah Jamin Keamanan Berlapis Sertifikat Tanah Elektronik*. Kompas.Com. <https://www.kompas.com/properti/read/2021/03/08/190513721/pemerintah-jamin-keamanan-berlapis-sertifikat-tanah-elektronik>
- Bachriadi, D., & Wiradi, G. (2011). *Enam Dekade Ketimpangan: Masalah Penguasaan*

Tanah di Indonesia. 82.

- Budiman, A. (2021). *Mabes Polri Siap Usut Kebocoran Data Nasabah BRI Life*. Nasional.Tempo.Co. <https://nasional.tempo.co/read/1488274/mabes-polri-siap-usut-kebocoran-data-nasabah-bri-life>
- Dewi Rosadi, S., & Gumelar Pratama, G. (2018). Urgensi Perlindungan data Privasi dalam Era Ekonomi Digital Di Indonesia. *Veritas et Justitia*, 4(1), 88–110. <https://doi.org/10.25123/vej.2916>
- Djafri, N. (2018). Manajemen Pelayanan (Berbasis Revolusi Mental). In *Idea Publishing*.
- Edmon Makarim. (2010). *Tanggung Jawab Hukum Penyelenggara Sistem Elektronik* (first edit). Rajawali Press.
- Eko Ari Wibowo. (2021). *Kebijakan Sertifikat Tanah Elektronik, KPA: Melanggar Aturan Lebih Tinggi*. Tempo.Co. <https://nasional.tempo.co/read/1429983/kebijakan-sertifikat-tanah-elektronik-kpa-melanggar-aturan-lebih-tinggi/full&view=ok>
- Hendra Kusuma. (2020). *Ketimpangan Kepemilikan Tanah di RI Masih Tinggi, Ini Datanya*. Detik.Com. <https://finance.detik.com/properti/d-5291541/ketimpangan-kepemilikan-tanah-di-ri-masih-tinggi-ini-datanya>
- Ilhafa, F., Nur, A. I., Faresi Wijaya, F., Destasari, T. P., Wimbo, S., & Pradnyawan, A. (2021). *Proceeding of Conference on Law and Social Studies Upaya Hukum Terhadap Keamanan Data Pribadi Korban Pinjaman Online*. 11. <http://prosiding.unipma.ac.id/index.php/COLaS>
- M. Sholeh. (n.d.). *Urgensi Perlindungan Data Pribadi*. Nasional.Sindonews.Com. Retrieved March 3, 2022, from <https://nasional.sindonews.com/read/507164/18/urgensi-perlindungan-data-pribadi-1628593702>
- Nashudin. (2016). *Manajemen dan Kepemimpinan Dalam Pelayanan Publik* (Sobri Sutikno (ed.)). Sanabil.
- Persada, S. (2021). *Data Penduduk di BPJS Kesehatan Bocor, Bukti Lemahnya Perlindungan Data Pribadi*. Fokus.Tempo.Co. <https://fokus.tempo.co/read/1465176/data-penduduk-di-bpjs-kesehatan-bocor-bukti-lemahnya-perlindungan-data-pribadi>
- Rahmatullah, I. (2021). Pentingnya Perlindungan Data Pribadi Dalam Masa Pandemi Covid-19 Di Indonesia. *Adalah*, 5(1), 11–16. <https://doi.org/10.15408/adalah.v5i1.19811>
- Utomo, S. (2021). Percepatan Reforma Agraria Untuk Mencapai Keadilan. *Jurnal Hukum Bisnis Bonum Commune*, 4(2), 202–213.
- Widiantari, M. M. (2021). Proceeding of Conference on Law and Social Studies URGENSI LITERASI ETIKA DIGITAL. *Prosiding Conference On Law and Social Studies*, 1–15.