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The Implementation of Transparency Principle in Land Services System Electronically

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Abstract

The Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (Ministry of ATR/BPN) strives to provide the best service for the community. Digital transformation began with the implementation of electronic land services since 2020, including Electronic Mortgage Rights (HT-el), Land Value Zone Information (ZNT), Checking Land Certificates, and Making Land Registration Certificates (SKPT). Digital literacy is not only in society but also in the bureaucratic environment (readiness for digitalization). The implementation of electronic land information services is one of the needs to serve the community in order to accelerate service transparency. The Indonesian government through the Ministry of ATR/BPN has gradually implemented electronic services by issuing Regulation of the Minister of ATR/Head of BPN No.5 of 2017 concerning Electronic Land Information Services, this is one form of legal politics to transform land and spatial planning information services as an effort improving the

public service system which concerns service methods and procedures in order to provide easy, fast, precise, affordable and accountable services through the application and development of Information and Communication Technology (ICT) in land administration services by expanding local community access, opening interactive services, and encourage community participation. The Ministry of ATR/BPN has a mission to improve the quality of good services and create a good governance system. It is hoped that electronic services can make it easier for the public to manage services in the land sector, so that it becomes easier, faster and more efficient. However, in practice, electronic services at the Banda Aceh Municipal Land Office are still not optimal, so it is necessary to digitalize the old services to be faster (efficient), but this will be a problem if rural people do not know electronic technology or are technologically illiterate due to imaginary reasons. Of cybercrime that can occur at any time.

Keywords: Transformation, Land Electronic Services, Land Registration

1. Introduction

The Ministry of Land Affairs and Spatial Planning/National Land Agency, as the government agency responsible for conducting government affairs in this field, is responsible for the provision of integrated land management services and administration within the unified national territory of the Republic of Indonesia. As about the Ministry of Land Affairs and Spatial Planning 2020 Presidential Regulation (Perpres) No.47 and Presidential Decree No.48 of 2020 on the National Land Agency.

The fundamental purpose of public service is to serve the community as a form of realizing civil rights. Each service has different requirements and procedures. Services provided by national offices are often viewed negatively by the public because they are seen as complex and costly, and some seek to profit from abusing the situation:

1. Public services are a series of activities carried out by public service providers in order to fulfill service needs in accordance with the laws and regulations that apply to each country and population regarding goods, services and/or administrative services.
2. Public service providers are every government institution, namely state administrators, corporations, independent institutions to carry out public service activities, and other legal entities formed solely for public service activities which are established based on law.

The Ministry of Land Affairs and Spatial Planning/National Land Agency (Ministry ATR/BPN), as a service-oriented government agency, is inseparable from its efforts to provide the best services to the community. This is consistent with the objective of the Civil Service Act, which is to provide legal certainty in the relationship between the public and public service managers. Services cannot be separated from society, and society needs the government to provide high-quality public services. Service quality is the comparison between the actual performance of the service received and the expectation of the service you would like to receive. The digital transformation begins with the launch of electronic land services since 2020, including electronic mortgage rights (HT-el), land value zone information (ZNT), land certificate verification and land registration certificate generation (SKPT).¹

Digital literacy is not only in society but also in the bureaucratic environment (readiness for digitalization). The development of internet-based information technology today has had a very significant impact on various aspects of human life. Advances in information technology have greatly influenced patterns of interaction between humans in society. This also has an impact on the implementation of public affairs, such as services provided by government agencies, the consequences of which include, among other things, adjustments to the development of human resources. This can be developed through training aimed at developing human resource capabilities in the field of technology.

Currently, the digital transformation of public services continues to be accelerated by the government. Digital transformation aims to provide quality, fast, easy, affordable and measurable services to the community. In principle, this digital transformation step is carried out to provide services that adapt to technological developments and meet people's expectations and needs. Indonesia, which consists of thousands of islands, has very valuable natural resources, all of which should be used to realize the welfare of the nation and state, namely prosperity (just and prosperous) for all Indonesian people.²

The statement of Article 1 paragraph (2) of the UUPA (Law No.5 of 1960) is a regulation of the nation's rights which are the highest control rights over common land and are the parent for other control rights over land. From the definition in Article 1 paragraph (2) of the UUPA, it can be stated that natural land resources are part of national rights that are inseparable from human life, so that land rights are national rights for humans which legally contain control and ownership of that land. Therefore, land rights, which in this case are the body of earth, water and space above the land, do not belong to or belong to the holder of the land rights. They are only allowed to use it with restrictions as stated in Article 4 paragraph (2) of the UUPA which states that it can be used or exploited only if necessary for purposes directly related to the use of the land. This is also in accordance with

reasonable limits regulated according to applicable laws and regulations. In order for land rights to receive legal protection and legal certainty, in addition to structuring and controlling land rights ownership issues, these lands must be registered.³

A land certificate is a document that proves ownership of land and is the final result of the land registration process. Land registration agencies did not exist in Indonesia until 1960, when PP No. 10 of 1961, the law governing land registration. This agency was established on the orders of UUPA, where one of the objectives of the promulgation of Law No.5 of 1960 concerning UUPA was to provide legal certainty regarding the land rights of the Indonesian people. In Article 19 of the UUPA, it is explained that the government as the highest authority is obliged to fulfill its obligation to register land to guarantee legal certainty for land owners regarding the location⁴, boundaries and area of land, its status, and the right to acquire land. land projects and proof of rights in the form of certificates.⁵

After receiving the certificate, the land ownership rights are clear. If a legal action is carried out regarding the area of land rights in which the land certificate is the legal object, it is necessary to check the certificate (this is what is known in practice as a clean check), where the existence or non-existence of the land rights is charged. a right, such as mortgage rights and so on. Checking certificates aims to provide legal protection and certainty for creditors or prospective buyers if there is a transfer of land rights, providing an explanation of the status and history of the land. Manual checks are regulated in Article 97 of the Regulation of the Minister of State for Agrarian Affairs (ATR)/Head of the National Land Agency (BPN) No.3 of 1997 concerning Provisions for the Implementation of PP No.24 of 1997. Manual checks are carried out by officers at the nearest Regency/Municipal Land Office. This check is carried out based on the land register, land book, measuring certificate and registration map. If it is safe, where the checks are appropriate and there are no problems, then the certificate will be stamped. However, if there are things that constitute irregularities or discrepancies, the Regency/Municipal Land Office will re-confirm the correctness of the certificate data or what is called a plotting application.

The implementation of electronic land information services is one of the needs to serve the community in order to accelerate service transparency. The Indonesian government, through the Ministry of ATR/BPN, has gradually implemented electronic services by issuing Regulation of the Minister of ATR/Head of BPN No.5 of 2017 concerning Electronic Land Information Services, this is one form of legal politics to transform land and spatial planning information services as an effort improving the public service system which concerns service methods and procedures in order to provide easy, fast, precise, affordable and accountable services through the application and

¹Ahmad Munawaruzaman, Implementasi Transformasi Digital Kementerian Agraria Untuk Peningkatan Pelayanan Publik, *Prosiding Senantias*. 2020 Vol. 1 No. 1, Desember 2020, hlm 596.

² Suhaimi, et. al., Arrangements and Stages of Implementation of Land Acquisition for Development for Public Interests, *International Journal of Multicultural and Multireligious Understanding*, Volume 10, Issue 11, 2023, pages: 10-18.

³ Elza Syarief, *Pensetifikatan Tanah Bekas Hak Eigendom*. Kepustakaan Populer Gramedia, Jakarta, 2014, hlm.27.

⁴ Della Rafiq Utari, Suhaimi, Pendaftaran Tanah Yang dikuasai Oleh Tempat-tempat Ibadah Umat Islam Di Kecamatan Kuta Alam Banda Aceh, *Syiah Kuala Law Journal*, Vol.4(3) Desember 2020, pp.310-322.

⁵ M. Abdurrachman, *Hukum Acara Perdata*, Universitas Trisakti, Jakarta, 2008, hlm.23.

development of Information and Communication Technology (ICT) in land administration services by expanding local community access, opening interactive services, and encourage community participation so as to realize increased access and quality of services.

Land information services are carried out through an electronic system using the Land Information Service application provided by (Ministry of ATR/BPN-RI). The Ministry of ATR/BPN has a mission to improve the quality of good services and create a good governance system.

It is hoped that electronic services can make it easier for the public to manage services in the land sector, so that it becomes easier, faster and more efficient.⁶

However, in practice, electronic services at the Banda Aceh Land Office are still not optimal, so it is necessary to digitalize the old services to be faster (efficient), but this will be a problem if rural people do not know electronic technology or are technologically illiterate due to imaginary reasons. of cybercrime that can occur at any time. Based on data processed in Computerized Land Activities (KKP) from the Ministry of Information Data Center (PUSDATIN) ATR/BPN, with an area of 556 hectares, Banda Aceh has an estimated area of 99,141 plots, but 83,952 plots have been mapped. There are still 985 parcels that have not been mapped. From the information above, only 84,937 have a certificate.⁷ The number of certificates is greater than those mapped because there are certificates but have not been mapped. Moreover, the city of Banda Aceh was hit by a tsunami which caused a lot of land data to be lost, affecting data that was ready to be used by electronic services, some documents and land books were lost due to the tsunami, plus the previous system was still manual and not yet online for land data because it had not been computerized. The Banda Aceh Land Office before the tsunami disaster was located in Mulia Village, Kuta Alam District, Banda Aceh, which was the area affected by the tsunami. The emergence of new obstacles due to the death of many land owners means that mapping is quite difficult because no one knows about boundary markers. For land mapping, the Banda Aceh Land Office is carried out if there is a report from the heirs, the office will make a detailed mapping, then in practice it is also found that there are many data differences between the owner's Identity Card (KTP) and the name on the certificate. Based on the description above, the discussion of this paper will discuss "Electronic Land Service Systems Based on the Principle of Land Information Openness".

2. Research Methods

The type of research carried out by this author is categorized as empirical legal research. In simple terms, Soerjono Soekanto is of the opinion that empirical legal research is a type of legal research that examines and analyzes the way the law works in society. This can be seen from the level of legal effectiveness, legal compliance, institutions or

agencies that enforce the law and the influence of law on society.⁸

The data source referred is the source where data can be obtained. In this research, two data sources were used, namely primary data sources and secondary data sources. Primary data sources are data obtained by a researcher from the source without going through other parties (directly from the object) and then collected and processed by a person or organization themselves.⁹ The main data source is field data which must pay attention to the sample population and respondents. This research uses primary data sources through a process obtained directly from the field through in-depth interviews.

3. Result and Discussion

Land registration is a prerequisite for proof of land rights and is therefore very important for those who hold land use rights. To provide legal certainty in the land sector, PP No.24 of 1997 was enacted in 1997, which was an improvement on PP No.10 of 1961 relating to land registration. The PP on Land Registration continues to maintain the objectives and system of land registration as actually stated in the provisions of the UUPA, i.e. land registration is conducted to ensure legal certainty in the land registration department.

Legal certainty refers to the certainty that a statute will be passed and promulgated because it contains clear provisions. Clarity means that there is no legal vacuum, the norm is not ambiguous or open to doubt (multiple interpretations), and therefore there is no conflict with the norm or its implementation. According to Sudikno Mertokusumo, legal certainty is a guarantee that the law is implemented and those who are entitled according to the law can obtain their rights and that the decision can be implemented. Although legal certainty is closely related to justice, law is not identical with justice.¹⁰

As a positive legal product, the regulation of electronic land certificates as preparation for plans to change the Indonesian land publication system has guaranteed legal certainty considering that it has been issued in the form of statutory regulations. As is known, in a land registration process, a certificate is the final product of the land registration process. Likewise, in the implementation of electronic land registration, where upon completion of the rights registration process a certificate of rights is issued in the form of an electronic certificate, the electronic certificate can also provide a guarantee of legal certainty and certainty of rights to the parts of the land being registered. In this case there is no difference between a regular certificate (which is in the form of paper) and an electronic certificate. So the certificate is a strong means of proof regarding a plot of land rights, because the certificate is an authentic deed made by an authorized official for that purpose and made based on applicable laws and regulations, where the State guarantees the accuracy of the physical and juridical data. Based on this, it can be concluded that the land certificate is a symbol of ownership of land rights.

⁶ Dwi Wulan Titik Andari, Dian Ares Mujiburohman, (2023), *Aspek Hukum Layanan Sertifikat Elektronik*, Jurnal Hukum Al' Adl, Vol. 15, No. 1, hlm. 156

⁷ *Komputerisasi Kegiatan Pertanahan Kantor Pertanahan Banda Aceh*, Pusat Data Informasi Kementrian ATR/BPN, <https://aplikasi.atrbpn.go.id/securepage?id=f2238e45-25aa-4976-91cf-dc255de131c8>, diakses pada tanggal 2 Desember 2023 pukul 10.00 WIB.

⁸ Soerjono Soekanto, *Pengantar Penelitian Hukum*, Penerbit Universitas Indonesia, Jakarta, 2012, hlm. 250.

⁹ *Ibid.*, hlm 213.

¹⁰ HLM.Salim Hs, 2010, *Perkembangan Teori Dalam Ilmu Hukum*, PT Raja Grafindo Persada, Jakarta, hlm. 24

Prior to the issuance of Minister of ATR/Head of BPN Regulation No.1 of 2021, land registration in Indonesia was carried out conventionally, meaning land registration was carried out manually with applicants via PPAT data to the local Regency Land Office. However, it is felt that this conventional registration needs to be changed according to current developments, so the latest regulations regarding electronic land registration have been issued with the result being an electronic certificate.

Apart from land registration being carried out electronically, digital transformation in land services has also been carried out, in order to create advanced and modern land and spatial planning institutions. In this regard, e-government is a necessity. In this context, apart from boosting the completion of land registration through PTSL, the Ministry of ATR/BPN has also initiated a digital transformation policy in land services. One of them is the Electronic Certificate policy through the Minister of ATR/Head of BPN Regulation No.1 of 2021 concerning Electronic Certificates, which is currently being replaced by the Minister of ATR/KBPN Regulation No.3 of 2023 concerning the Issuance of Electronic Documents in Land Registration Activities. What is meant by electronic document in this regulation 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 electronic system.

The legal basis for the existence of electronic land certificate land services is the Minister of ATR/Head of BPN Regulation No.3 of 2023. In Article 1 point 9 of the Ministerial Regulation, electronic certificates are defined as "Electronic Certificates, hereinafter referred to as e-certificates, are certificates issued through an electronic system in the form of an electronic document whose Physical Data and Juridical Data has been stored in BT-e1". So the results of land registration activities are published in the form of electronic documents. The definition of electronic documents is stated in Article 1 number 12, namely: "Electronic Documents are 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 electronic system, including but not limited to writing, sound, images, maps, designs, photographs or the like, letters, signs, numbers, access codes, symbols or perforations that have meaning or significance or can be understood by people who able to understand it."

Substantially, a land title certificate is a copy of the land book and measurement letter which have been put together and given to the entitled person as proof of title. In the land registration process, the land title certificate is the final product of all these processes, therefore the question of what form the certificate takes is not an issue, whether in terms of its analog/physical paper form, or electronic or virtual form. The most important thing is that all land registration activities use an electronic system in the form of electronic documents.

Based on Technical Instructions No.3/Juknis-HK.02/IV/2022, it is determined that the Electronic Certificate Checking Service can be submitted in 3 (three) ways, namely:

1. Through the Ministry Partner Application, for PPAT applicants in the context of making a PPAT deed; or

2. Through direct application at the local Land Office, for applicants holding land rights;
3. Through maintaining land registration data online.

The digital transformation of the Electronic Land Service System is very effective according to Dr. Ramlan, S.H., M.H Head of the Banda Aceh Land Office in an interview on Monday 15 January 2024. He explained that the Ministry of Agrarian Affairs and Spatial Planning received a reward from the Ministry of State Apparatus Empowerment and Bureaucratic Reform of the Republic of Indonesia (abbreviated as KemenPAN-RB), which reward was regarding the achievements of the Ministry of ATR in carrying out extraordinary digital transportation. Ministry of Agrarian Ministry with the best value in e-services. This has a big impact on the country and the stakeholder communities who use these services.

Dr. Ramlan, S.H., M.H. The Head of the Banda Aceh Land Office in an interview on Monday 15 January 2024 also explained that there were differences in the procedural flow of the land registration process before the technological transformation was carried out. With this digital transformation, it is more practical. Now people can register themselves, there is a portal called touch my land, people can create a touch my land account which is a single sign on which makes things easier for people. People do not need to come to the office to register. They can register via the file upload portal and people can also set a schedule for when they will come to the office to physically submit the files and pay the deposit order. The following is the flow of land information electronic services:

This effectiveness can also be seen from the list of services for 2023 as follows:



Based on this presentation, it can be seen that this digital transformation reflects the principles of openness and simplicity as stated in Article 2 PP No.24 of 1997 that land registration is carried out based on the principles of simple, affordable, safe, open and up-to-date. The meaning of the simple principle itself is an activity carried out in the form of a list of land contents whose aim is to make it easy for interested parties to understand, especially for holders or

owners of land rights. As with this, of course, in a simple way, especially the processing process must save costs, time and procedures so that it is more effective in carrying out land registration. The existence of this digital transformation simplifies the process, saving costs and time. Because people don't need to go back and forth to take care of the requirements and people can also choose a schedule when to come to the office to complete the requirements documents. Apart from the simple principle of digital transformation, electronic services also reflect the principle of openness, seen from the ease with which people can check SKPT and land value zones. This is reflected by the fact that transparency has a good impact on people's thinking, people will be more compliant with existing regulations. One element of openness here includes community freedom, where the principle of openness has a principle that guarantees access or freedom for everyone to obtain or obtain data or information regarding government administration practices.

The principle contained in openness is to guarantee access or freedom for every person to obtain information or anything in the process of administering government, in this case it can be information about government policy, the process of making laws and regulations and their implementation, as well as the results that have been achieved. Achieved in the process of government administration. This principle covers or encompasses 2 (two) aspects, namely (1) public communication carried out by the government towards its people or citizens, and (2) the public's right to gain access to information regarding government administration. In reality, these two aspects are very difficult things to do, especially if the government does not handle them or does not implement them well, which will be reflected in its performance.¹¹

Regarding electronic-based land services, four types of nationally based land services have been carried out, Land Value Zone Information (ZNT), Checking or Examination of Land Certificates, Land Registration Certificates (SKPT) and Electronic Mortgage Rights. These programs are carried out in stages, including by means of an electronic certificate, with the issuance of ATR/KBPN Ministerial Regulation No. 3 of 2023 concerning Issuance of Electronic Documents in Land Registration Activities. Article 3 ATR/KBPN Ministerial Regulation No. 3 of 2023 concerning Issuance of Electronic Documents in Land Registration Activities.

4. Conclusion

The electronic land service system is reviewed based on the principle of openness of land information and its implementation can be said to be effective. The ATR Ministry received a reward from the Ministry of State Apparatus Empowerment and Bureaucratic Reform of the Republic of Indonesia (abbreviated as KemenPAN-RB), where the reward was related to the ATR Ministry's achievements in carrying out extraordinary digital transportation. The agrarian ministry is the ministry with the best value in electronic services. This has a big impact on the country and the stakeholder communities who use these services. Judging from the electronic service application,

land information reflects the principle of openness. Furthermore, if you look at the ease with which people can check the SKPT and land value zones, this reflects the existence of transparency, so that it has a good impact on people's thinking, so that people will be more obedient to existing regulations. Community freedom is an element of the principle of openness, where the principle of openness has principles that guarantee access or freedom for everyone.

5. Suggestion

It is recommended that there be more outreach regarding the transformation of this electronic service to the public in order to convince the public that this is the best facility for the community provided by the state. Furthermore, it is hoped that there will be special treatment for people who do not have cellphones, are elderly or who cannot use this electronic service system. It is recommended to optimize technical guidance and quotas for technical guidance officers so that employees understand how to use this electronic service and carry out evaluation developments every month.

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