



The essence of legal certainty of land title certificates in the land registration publication system in Indonesia

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ABSTRACT

The problem of legal certainty regarding land title certificates, which are a type of land registration in Indonesia, has persistently presented significant obstacles to society, because In Indonesia, the prevailing system of publication is characterized as negative, despite the presence of certain positive aspects. However, the validity of certificates attesting to these rights can be subject to disputes and the state is unable to assure the accuracy of both physical and legal information. This study involves normative legal research from statutory sources, conceptual, and philosophical approaches. The results of research into the nature of legal certainty regarding land rights certificates cannot yet be given to individuals or organizations that own land rights in Indonesia sustained as a result of the absence of a proactive land registration publication system.

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1. Introduction

Fundamental legislation of agrarian matters (hereinafter referred to as UUPA) was promulgated to lay the foundation for a comprehensive legal guarantee of land ownership for the entire population. In this regard, agrarian regulations in Indonesia regulate Land registration plays a crucial role in providing legal assurance to individuals possessing land rights. Land registration holds significant significance and offers manifold advantages across diverse dimensions of individuals' existence, primarily owing to land being an essential requirement, serving as a dwelling and a terrain for agricultural activities, and collecting the results, even in its development land has a multidimensional meaning embrace a range of elements, including legal, sociocultural, socioreligious, and economic consequences. the subjects of a country's independent authority, security, military defense, and governance. The complex nature of land creates challenges for governance and poses a multifaceted, cross-sectoral issue

for land affairs. Furthermore, land ownership is a crucial component of human rights when seen through the prism of individual rights (Suyanto, 2022b).

The Agrarian Principles Act, also known as Law No. 5 of 1960, is legislation that regulates the fundamental principles governing the agrarian sector, a legal source for agrarian regulations in Indonesia, during its development experienced many criticisms and challenges, including implementing regulations that were not yet fully able to provide concrete solutions for land registration in Indonesia (Suyanto, 2017). The concept in the UUPA which combines the concept of land and human relations, between individualism and communalism, is actually by the values of Pancasila. There is a striking difference between individualism, which holds the view that each person, based on his or her abilities, can own land without restrictions, and communalism, which holds that human equality prohibits individual land ownership by humans. The UUPA has brought these two understandings together, namely by regulating that every citizen may have land rights, but these rights are limited in extent and the definition of their function, for the sake of the common good.

At the beginning of President Joko Widodo's administration, he viewed agrarian conflict in society as a serious matter, so he included this problem in the national agrarian reform program, this was due, among other things, to the fact that almost 50% of the land area in Indonesia possessed a particular designation that did not make it prone to agrarian conflict. The significance and value of registering land ownership is not widely understood by the public, even though land registration as an implementer of the UUPA provisions has been regulated through Land Registration issued by the government, represented by Government Regulation Number 24 of 1997.

Implementing Government Regulation Number 24 of 1997 is regulated by the Minister of Agrarian Regulation / The Minister of Agrarian Regulation Number 8 of 2012 subsequently made modifications to the original legislation, which was known as the Head of the National Land Agency Number 3 of 1997, which was then amended by the Minister of Agrarian Regulation Number 12 of 2012, regarding the feasibility process of the carrying out of the 'Complete Systematic Land Registration' (CSLR) program, one of the objectives of the Minister's regulation is to make it easier for the community to make their land certificates (Absori & Bangsawan, 2020).

The implementation of land registration initiatives aimed at generating certificates that serve as evidential documents for land ownership rights is the realization of one of the objectives of the UUPA (Suyanto, 2022b), the obligation to register land is a burden on the government, which is implemented in stages, in regions simultaneously in Indonesia. One of the objectives of land registration in Government Regulation Number 24 of the year 1997 in Article 3, the main objective is to offer assurance and safeguard the legal interests of individuals possessing rights to a specific parcel of land, apartment units, or any other registered entitlements. This way, these rights holders can readily establish their ownership and entitlements, ensuring clarity and legal protection. To facilitate this, a certificate of land rights is issued to the respective rights holder, thereby affirming their legal status. The urgent of this research was according to the Basic Agrarian Law and Government Regulation Number 24 of 1997 concerning Land Registration, Indonesia's publication system is a negative publication system with a positive pattern. This makes it impossible to have legal certainty regarding certificates as proof of land rights, which is why the research was urgent.

It turns out that even though the person in breach of the land ownership certificate has received recognition in the UUPA, the certificate provision falls short of ensuring absolute legal certainty for the proprietor, this is because Government Regulation No. 24 of 1997 provides an opportunity for other parties who feel they own the land to sue the political organization whose title is mentioned on the official document (Santoso, 2017). Paragraph (1) of Article 32 of Government Regulation No. One drawback of Act 24 of 1997 is the absence of state assurance regarding the accuracy of the physical and juridical data provided, leaving the certificate owner vulnerable at any given moment, this is known as the negative publication system.

Considering what has been said thus far, the author demonstrates a great deal of interest in learning more about the nature of legal certainty concerning land title holders by Government Regulation Number 24 of 1997, and with the existence of a negative publication system in this regulation, because there are vague legal norms regarding legal certainty so it is necessarily explained in this research. This research is expected to provide benefits in providing legal certainty to holders of certificates of proof of land rights using the negative publication system in land registration in Indonesia.

2. Method

This study represents normative juridical research, which is essentially a form of research aimed at conducting research, and study law can be described as a collection of norms, rules, legal principles, legal doctrine, and legal theory (Suyanto, 2022a) with Sources of legal materials such as legislative regulations, judicial pronouncements, doctrines, and legal maxims or legal principle. The methodology employed in this legal inquiry is statutory, which is relevant to the research, a conceptual approach, namely an approach using expert opinion, and legal doctrine and a philosophical approach, namely an approach pattern using a philosophical paradigm in a rule of law.

3. Analysis and Results

The Basic Agrarian Law emphasizes guaranteeing legal assurance by the government concerning land rights, and comprehensive land registration is conducted across Indonesia. Land registration includes measuring, recording, and administration of land rights registration, including their transfer, which is done through the mapping and bookkeeping processes. A reliable source of evidence for establishing and confirming such rights is the issuance of letters of proof of rights. To ensure further legal certainty, implementation of the matter is governed by the provisions outlined in Government Regulation number. The legislation titled 'The Land Registration Act of 1997', declaration demonstrates the certificate's strength in offering substantial proof of the information it contains, both legally and physically, and it supports the certificate's validity as proof of ownership. This is valid as long as the information recorded in the land rights record book and measurement letter for that particular property matches the physical and legal data exactly.

A land title certificate is a legal product that originates from a long process of land registration which is valid as proof of title, but the certificate is not absolutely valid, meaning that the certificate can still be canceled if the certificate is legally flawed. Article 23 paragraph (1) UUPA regulates that certificates of land rights in the process of transfer, deletion and encumbrance with other rights must be registered. This provision is strengthened by the Constitutional Court decision Number 12/PUU-XIX/2021 which rejects the material review of article 23 of the UUPA.

For the land title certificate to be categorized as having legal certainty, one of them is: First, it must be issued by the authorized agency, the agency responsible for managing the nation's land; Second, the certificate must be requested by the applicant in good faith. Wirjono Prodjodikoro defines good faith as honest or honest (Mahfud, 2020). Good faith is differentiated in its subjective and objective nature. In subjective good faith, individuals focus on the genuine attitudes and actions of the subject. However, in objective good faith, the emphasis is placed on things that are in accordance with common sense and justice; Third, the publishing process is in accordance with applicable statutory procedures or mechanisms; and Fourth, the land object is controlled continuously for more than 5 (five) years.

Rights holders who comply with these criteria can be given conceptual legal protection, legal protection for individual and community rights that are provided through measures of preventive legal protection as well as measures of repressive legal protection (Sudiarto et al., 2023). There are two implications to obtaining the certificate of land rights regarding land ownership, namely, First, positive implications including legal certainty of land rights, a clean and orderly land registration service system, avoidance of conflicts or disputes due to certificate status, creation of public trust in the state; Second, the negative implications that can occur include incorrect certificate legal products due to negligence, criminalization in land registration and falsification of certificates.

Article 3 of Government Regulation Number 24 of 1997 regulates the assurance of legal certainty concerning land rights certificates, namely First, assurance regarding the topic of ownership and usage of the land, namely There are three essential aspects to consider when it comes to land rights: Firstly, ensuring clarity about the individual or organization involved; Secondly, ensuring clarity about the specific areas of land, including its location, boundaries, and size; And thirdly, ensuring clarity about the ownership or entitlement of the land, namely certainty regarding being aware of the condition of various rights, such as ownership rights, rights to use buildings, and land rights. The examination of the assurance of legal entitlements must be studied in written and unwritten law.

According to Gustav Radbruch, legal certainty encompasses four fundamental aspects. The first aspect is that the law is positive, indicating that it is based on legislation. Furthermore, the law is grounded on facts, implying that it is rooted in actuality. Thirdly, it is essential to express facts clearly to prevent any misinterpretation (Priyatno & Aridhayandi, 2018). Furthermore, it is imperative that positive law is not subject to frequent alterations. In his book 'The Morality of Law', Lon Fuller argues that legal certainty highlights the importance of consistency between regulations and their execution. This concept extends to the practical aspects, actions, behaviors, and factors impacting the implementation of positive law (Sunstein & Vermeule, 2018).

Meanwhile, Jan Michiel Otto believes that legal certainty actually has a more juridical dimension and must be enforced by law enforcement agencies which have the duty to guarantee legal certainty. Several requirements related to the internal structure of legal norms themselves are necessary for the establishment of legal certainty in statutory regulations (Absori & Bangsawan, 2020).

According to Urip Santoso, ensuring legal certainty for land rights can be achieved in two ways. Firstly, by having clear and comprehensive legal documents that are consistently implemented according to the specified rules. Secondly, land registration enables landowners to provide evidence of their rights. In the areas under their jurisdiction, they assert their authority and

furnish relevant information about the land to parties involved in the legal proceedings concerning that specific land (Santoso, 2019)

3.1. The Land Registration Publication System in Indonesia

Before the land registration provisions were put into effect in Government Regulation Number 24 of 1997, the implementation of the Basic Agrarian Law regarding land registration was carried out through Government Regulation Number 10 of 1961. The law in the field of land regulation pertains to a publication system that predominantly has negative aspects, although it does include certain elements of positive publication (Suhariono et al., 2022).

The arrival enrollment framework executed in a nation is based on the lawful standards received by the state in exchanging arrival rights. There are two sorts of legitimate standards, specifically the rule of great confidence and the guideline of *nemo furthermore juris* (Sutedi, 2010). Under the good faith principle, individuals get something. According to the law, those who exercise their rights in good faith shall continue to maintain such rights; also, the *Nemo plus juris* concept prohibits persons from transferring rights that they already own (Wulansari et al., 2021). The *Nemo plus Juris* principle method employs a negative publishing system, whereas the Principle of Good Faith system utilizes a positive publication system (Suyanto & Khulsum, 2022). However, there isn't just one nation in the globe that adheres to one of these principles purely, because both have their respective advantages and disadvantages.

From the above, two publication systems in land registration are used globally specifically the positive and negative publication systems throughout the globe, the most basic thing that differentiates the two is the value of the strength of proof of rights (Suyanto, 2023).

3.2. Land Registry positive publication system

A rights registration system is always used in a positive publication system, and the property rights holder's name is registered (title by registration/registration is important) (Anindhita et al., 2021). An indefeasible title—a right that cannot be contested—is granted to the person whose name is included as a rights holder in a register. The information in the registry is 100% accurate.

The title certificate serves as the sole evidence of absolute land rights under the positive publication system. Even though the right holder is not the actual owner, this method ensures that his name is listed in the land book and that he cannot have it taken away from him. The holder of the land rights, who is the only proprietor, is given more trust by this arrangement.

A land registration system that employs a positive publication system has various features, such as a. the certificate issued as proof of rights is absolute, meaning that the juridical and physical information contained in the certificate cannot be contested and provide total trust in the land book; b. the nation acting as the registrant guarantees that the juridical and physical information in the registration is correct; c. the registration system uses a rights registration system; d. other parties who suffer losses from the issuance of land certificates receive compensation in other forms; e. third parties who acquire land in good faith are granted absolute legal protection; and f. Land registration procedures are laborious, with land registration officers taking great care in their work (Yasa & Bagiastra, 2021).

In the positive registration system, the legal risk if there is a falsity is borne by the state, in the form of payment of compensation to claimants whose rights are proven to be true. This system

also applies the concepts of indefeasibility and indemnity as a form of providing compensation for errors in land rights certification.

The three primary concepts of the indefensible concept are as follows: First, the mirror principle, which mandates that the outcomes of land registration accurately and comprehensively reflect the current facts of land ownership rights, including usufructuary land, land mortgages, land leases, and transfers of land rights. agreement, for the community to view the land information, it must be recorded in the land certificate and online system; The second concept is the curtain principle, which asserts that a curtain is utilized at the register to instill trust in the customer. In this instance, the buyer is spared the necessity to inquire into or confirm the land ownership history listed in the register, and lengthy and complex documentation is not required to prove land title; The third premise is insurance, which explains why the rights registration system offers assurances or reimbursement (positive publishing). If the land register is inaccurate, the government will compensate the injured land registrant (N. Apriani & Hanafiah, 2022).

The concept of indemnity literally means saving from loss and for the insurance term protecting or securing from damage or loss, thus indemnity is providing financial compensation for all losses suffered by the insured and placing them in the same position after the incident as they had before.

Countries that claim to use this positive publication system are mostly developed countries whose land administration is orderly, such as Australia, Singapore and Switzerland (D. Apriani & Bur, 2020).

3.3. Land Registry system of negative publications

The land registration system uses a deed registration system; certificates issued as proof of rights are strong; that is, the physical and legal data contained in the certificate are considered correct as long as they are not proven otherwise by other evidence; and certificates are not the only proof of rights. These are some of the characteristics of the negative publication system in land registration.

The state does not warrant the accuracy of the legal and physical facts in land registration under this method, to guarantee legal certainty this system uses expired institutions (acquisitive verjaring or adverse possessive) (Pandey, Anastassia, 2017) if there is another party who is harmed then it can submit a request for the government, acting as the land registration organizer, to revoke the certificate; in this case, the land registration officer takes a passive role, accepting solely the information provided by the party seeking land registration.

A negative publishing method for land registration does not confer new rights on those who purchase land from parties to which they are not entitled. Nemo plus juris, the idea that a person cannot give up or transfer rights beyond what they now possess, governs this system. Since the state cannot ensure that the data is accurate, neither the legal nor the physical information in the negative system land registration may be taken at face value. Therefore, those who believe they have a right to land can still use the legal system to preserve that right (Safitri et al., 2020).

3.4. Indonesian Land Registration Publication System

Following the passage of the Basic Agrarian Law, Indonesian land registration follows a system of title registration. This system is in place because customary law in Indonesia transfers land

rights in a real, transparent, and monetary manner (continuous, concrete, believed and participated *denken*). The UUPA employs a mixed system, such that good aspects are given positive publicity. This is evident in paragraph (2) of Article 19, which states that land registration requires the supply of letters of proof of title, which serve as powerful evidence, while the positive features of Article 19 paragraph (1) of the UUPA states that land registration is done by the government to ensure legal certainty.

Since the UUPA and PP No. 24 of 1997 simply specify that land registration entails presenting proof of title papers that serve as solid evidence, it may be inferred that land registration in Indonesia does not tightly govern the land registration system it adheres to. The information contained in a certificate of land rights is deemed valid as long as there is no evidence to the contrary, therefore it is merely a powerful tool for demonstrating rights and not a definitive or flawless proof.

The negative publication system adopted by the land registration system in Indonesia in guaranteeing legal certainty is very weak because it is possible that there will be lawsuits from other parties and in this position the government is passive (Wulansari et al., 2021). Legal certainty in the land registration system in Indonesia cannot be achieved. achieved through the institution of *acquisitieve verjaring* or adverse possession because this institution only exists within the principles regulated by *Burgelijke Wetboek*, but follows the concept of legal certainty based on customary law known as *rechtsverwerking* (Satya, 2021).

There are several conditions for the application of the *rechtsverwerking* institution in land registration to carry it out, namely: First, it applies to plots of land for which a certificate has been issued; Second, there is real physical control of land plots; Third, there is an element of good faith; Fourth, the five year period has passed. (Laksamana et al., 2018). In this way, the *rechtsverwerking* institution can answer the problem of legal certainty in the land registration system in Indonesia (Hutagalung, 2000).

4. Conclusion

The fundamental purpose of certificates serving as evidence of land rights is to ensure ownership of those rights in a way that is unassailable, robust, and unaffected by third parties. The state is in charge of organizing land registration as required by the Basic Law to achieve this legal certainty. To ensure that the legal and physical details in land registration are accurate, *aria* must be present. The research implication that legal certainty regarding certificates as proof of land rights has not been possible under Indonesia's publication system, which is a negative publication system with a positive pattern as stated in the Basic Agrarian Law and Government Regulation Number 24 of 1997 concerning Land Registration. To achieve this legal stability, changes are needed, Indonesian land registration publications have established a publishing scheme. The scientific contribution of this research provides a solution to the essence of legal certainty for holders of certificates of title by changing land registration regulations from a negative almost positive publication system to a pure positive publication system.

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