

## Land Registration in Realizing Legal Certainty of Land Ownership

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### Abstract

*This research aims to know and understand that by registering land can realize legal certainty over land ownership. The research method used to achieve the purpose of this writing is the normative juridical research method which, this research is based on reviewing various formal rules, such as laws, literatures and journals. The results of this study state that the purpose of land registration is to ensure legal certainty by the Government. In addition to providing legal certainty, the purpose of land registration is to provide legal protection to the holder of rights to a plot of land, flat units and other rights listed in order to prove that he as the holder of the rights concerned, so as to provide information to interested parties including the Government in order to be able to Easily obtain the necessary data*

### Keywords

land registration; purpose of  
land registration; legal certainty



## I. Introduction

Land as a part of the earth's surface has values that are very important in human life, either as a place or space for life with all its activities, as a source of life, even as a nation, land is an element of territory in state sovereignty. Therefore, land for the Indonesian people has an eternal relationship, is religious magical, which must be protected, managed, and used properly.

All human activities cannot be separated from the existence of land, because it is a place where human live and continue their lives. As human nature, land is required as a place to move and a place to earn a living. Therefore, the relationship between human and land cannot be separated. So close that it makes a stronger form of relationship such as social, emotional, and spiritual.

Human build building on the land to be used as a place to live or to work. The need for land these days is increasing in line with the increase in population and other needs related to the land. Utility of the land for public interest is very important so that individuals and legal entities demand legal certainty over the land.

The strong relation between human and the land make a legal force is needed in it. This legal force may be obtained if the land registered by the owner, as mandated by Article 19 of Law No. 5 of 1960 concerning Agrarian Principles. With the registration of land rights or the granting of land rights to the subject of the right, administratively this will certainly achieve a guarantee of legal certainty for the subject, meaning that the subject of the right is administratively guaranteed to benefit from using the land ownership right for anything as long as the use of the right is in accordance with its designation. Therefore, if all land parcels have been registered and utilized by the right holder, there is a guarantee of certainty of rights to all registered land parcels and the positive impact can reduce any problems related to the land, especially regarding the use and utilization of land, and it is not impossible if the price of land from time to time increases due to the registration of a person's land rights.

Land registration is an activity carried out for the first time to register lands that have never been registered or have never been certified, in accordance with the provisions of Government Regulation No. 24 of 1997 concerning Land Registration. As a very important matter, land rights need to be registered to ensure legal certainty, in order to ensure legal certainty for rights holders and other interested parties in the land. The right to control land by the state means that the state can give land to a person or legal entity with a right according to its designation and needs, for example Ownership Rights, Cultivation Rights, Building Use Rights, and Use Rights.

The implementation of land registration throughout the territory of the Republic of Indonesia is the obligation of the government and rights holders in accordance with Article 19, Article 23, Article 31, and Article 38 of the Basic Agrarian Law (commonly abbreviated as UUPA). Land registration is a requirement to achieve legal certainty and legal protection of the land rights.

Land registration not only serves to protect the right holder, but also serves to find out the status of a land parcel, such as who owns it, what its rights, how wide it is, what it is used for and so on. The guarantee of legal certainty to be realized in this land registration includes the certainty of the status of the registered rights, the certainty of the subject of the right and the certainty of the object of the right. This land registration produces a certificate as proof of rights.

The holding of land registration will have legal consequences, namely the issuance of a certificate the right-evidencing document commonly referred to as a land certificate to the holder of the land rights concerned which serves as strong evidence. Certificates are the right-evidencing document that are valid as strong evidence of physical data and juridical data contained therein, as long as the physical data and juridical data are in accordance with the data contained in the document or the letter of measurement and the book of land rights in question.

The implementation of land registration is also intended to provide information regarding land parcels so that interested parties, including the government, can easily obtain the data needed to carry out legal actions regarding registered land parcels and apartment units. The proper implementation of land registration is the basis and embodiment of orderly administration in the land sector.

## II. Research Method

Legal research is a process to find legal rules, legal doctrines, and applicable legal principles in order to answer the faced legal issues. The research method used in this research is normative juridical (legal research), which means problems that are discussed and explained by applying the norms or rules that applied in positive law by examining various kinds of formal rules, such as laws, literatures, and journals containing theoretical concepts which are then proposed with the subject problems of this research.

## III. Result and Discussion

### 3.1 The Definition of Land Registration

Land registration in Latin is called *capitastrum* which means a register or capita or unit made for Roman land taxes. In Germany and Italy it is called *Catastr*, while in French it is called *Cadastre*, and finally by the Dutch Colonial in Indonesia it is called *Kadastrale*

or *Cadastre*. *Cadastre* is a technical term for something that refers to the area, value and ownership (or other rights) of a land parcels.

According to Boedi Harsono, land registration is an activities that are carried out continuously and regularly to collect, process, store, and present certain data regarding certain parcels or lands in a certain area with certain purpose such as for the benefit of the people, in order to guarantee legal certainty in the land sector, including the issuance of evidence and its maintenance.

Government Regulation Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA), is a basic regulation that regulates the control, ownership, designation, use, and control of land use with the aim of managing and utilizing land for the greatest prosperity of the people. One of the aspects needed for this purpose is the certainty of land rights which is the main basis for legal certainty of land ownership.

To guarantee legal certainty of land rights, Article 19 of the UUPA has regulated the basic provisions of land registration as follows:

- (1) In order to guarantee legal certainty by the government, land registration is carried out throughout the territory of the Republic of Indonesia according to the provisions regulated by government regulations.
- (2) Land registration that has been mentioned on paragraph 1 as follows:
  - a. Land measurement, mapping, and bookkeeping;
  - b. Registration of land rights and the transfer of these rights;
  - c. The provision of the right-evidencing document as a strong evidence.

The legal certainty in the above provisions referred to:

- a. Certainty regarding the subject of land rights, which is certainty regarding the person or legal entity who is being the holder of the land right;
- b. Certainty regarding the object of land rights, which is certainty regarding the location of the land, land boundaries, and the wide (length and width) of the land.
- c. Government Regulation Number 24 of 1997 concerning Land Registration as a special regulation regarding land registration explains in Article 1 point 1 stated:
- d. "Land Registration defines land registration as a series of activities carried out by the government continuously, continuously and regularly, including collection, processing, bookkeeping and presentation, as well as maintenance of physical data and juridical data in in the form of maps and lists, regarding land parcels and apartment units, including the provision of certificates of title for land parcels that already have rights and ownership rights over flat units as well as certain rights that encumber them."

The definition of registration in Article 1 point 1 of Government Regulation Number 2 of 1997 is a refinement of the regulation of Article 19 paragraph 2 of Government Regulation Number 10 of 1961 as a regulation regarding previous land registration. In Government Regulation Number 10 of 1961 it is stated that land registration only includes: Measurement, Mapping and Bookkeeping of Land, Registration and Transfer of land rights and presenting evidence as a strong evidence.

As stated in Article 2 of Government Regulation Number 24 of 1997 that land registration is carried out on the basis of simple, safe, affordable, up-to-date, and open principles. The explanation of these principles is as follows:

- a. Simple Principles

This is intended that the basic provisions and procedures can be easily understood by interested parties, especially land rights holders.

- b. Safe Principle

This is intended to show that land registration needs to be carried out carefully and carefully so that the results can provide legal certainty guarantees according to the purpose of the land registration itself.

c. Affordable Principles;

This is intended to be affordable for those in need, especially by taking into account the needs and abilities of the weak economically. The services provided in the context of carrying out land registration must be affordable by the parties who need it.

d. Advanced Principles

It means adequate completeness in its implementation and continuity in data maintenance. Available data must show the current state. For this reason, it is necessary to follow the obligation to register and record changes that occur in the future.

e. Open Principles

It means that the data stored in the Land Office is always in accordance with the real conditions in the field, and the public can obtain information about the correct data anytime.

### 3.2 Purpose of Land Registration

Initially, registration was carried out for fiscal purposes (fiscal cadastral), which means the land registration that worked for tax payments, but in its development, to face the challenges faced in legal actions regarding land, land registration was born for legal purposes. (*rechtkadaster*).

The Basic Agrarian Law (UUPA) states that the purpose of land registration is to ensure legal certainty by the Government. The Basic Agrarian Law (UUPA) instructs the Government to carry out *recht cadastral* land registration, which aims to guarantee legal certainty where the land registration is carried out by the Government based on the provisions regulated by Government Regulation.

In addition to provide legal certainty, the purpose of land registration is to provide legal protection to the holder of the right to a parcel of land, apartment unit and other registered rights in order to prove that he is the holder of the right in question, so as to provide information to the parties concerned and interested parties including the Government so that they can easily obtain the required data. Land registration is also carried out in order to carry out orderly land administration.

Based on the foregoing, it can be concluded that the main purpose of land registration is to ensure legal certainty over land owned by interested parties on the land, so as to provide legal protection for the interested parties.

### 3.3 Implementation of Land Registration

The Basic Agrarian Law (UUPA) as a basic regulation explains that land registration activities carried out by the Government include:

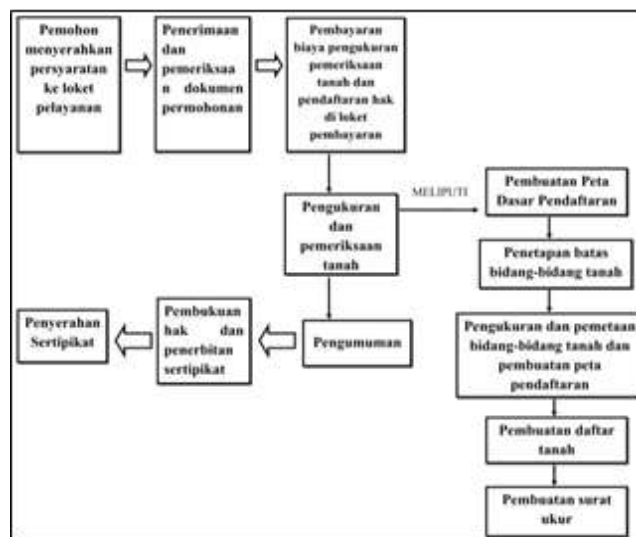
- a. Measurement, mapping and bookkeeping of the land;
- b. Registration of land rights and the transfer of these rights;
- c. Provision the right-evidencing document, which serves as strong evidence.

Land registration is carried out by the National Land Agency (BPN) while its implementation of land registration is carried out by the Head of the Land Office in regions throughout Indonesia. In carrying out land registration, the Head of the Land Office is assisted by PPAT and other officials which assigned to carry out certain activities according to Government Regulation Number 24 of 1997 and its implementing regulations.

In land registration there are conditions that must be met by the applicant. These conditions are as follows:

1. Application form that has been filled in and signed by the applicant or his/her proxy on stamp duty. This application form contains:
  - a. Personal identity;
  - b. The area, location, and use of the land requested;
  - c. Affidavit of non-disputed land;
  - d. Affidavit of physically controlled land.
2. Power of attorney if authorized;
3. Photocopy of the identity card (KTP and KK) of the applicant and his/her proxy if authorized, which has been matched with the original by the counter officer;
4. Proof of ownership of land/customary property rights/former customary property.
5. Photocopy of the current year's SPPT PBB which has been matched with the original by the counter officer and submission of proof of SSB (BPTHB);
6. Attach proof of SPP/PPH in accordance with the provisions.

The land registration process takes approximately 98 days and requires a fee consisting of a registration fee of IDR 50,000 and a measurement fee which the amount depends on the area and location of the land.



**Figure 1.** Scheme Of Land Registration Procedure

The implementation of land registration includes land registration activities for the first time (Initial Registration) and maintenance of land registration data (maintenance).

a. Land Registration Activities for the First Time (Initial Registration)

Land registration for the first time is the activity of land registration for the object of land that has not been registered based on Government Regulation Number 10 of 1961 concerning Land Registration or Government Regulation Number 24 of 1997.

Land registration activities for the first time comprise the following:

1. Collecting and processing of physical data;
2. verifying rights and recording them;
3. Issuance of Certificates
4. Presentation of Physical Data and Juridical Data
5. Storage of Public Registers and Documents

In land registration activities for the first time, a land certificate will be issued to the registrar. Land registration activities for the first time are carried out through systematic land registration and sporadic land registration.

#### b. Maintenance Of Land Registration Data

The maintenance of land registration data is the activity of land registration which aims at adjusting the physical data and juridical data contained in cadastral maps, land registers, name registers, survey documents, land books, and certificates to changes which take place subsequently. Activities for maintaining land registration data include registration, assignment of rights, registration of data such as changing the name of the right holder, deleting or adding expired rights, splitting, separating, and merging registered land.

The maintenance of land registration data shall be implemented in the case where there are changes in the physical data or juridical data on a land registration object which has been registered. The right holder concerned is obliged to register the changes in the physical data or juridical data to the Land Office to be recorded in a land book. This land registration data maintenance is carried out so that the data available at the Land Office remains in accordance with the latest conditions.

### IV. Conclusion

The Basic Agrarian Law (UUPA) states that the purpose of land registration is to ensure legal certainty by the Government. The Basic Agrarian Law (UUPA) instructs the Government to carry out *recht kadaster* land registration, which aims to ensure legal certainty where the land registration is carried out by the Government based on the provisions stipulated by Government Regulation.

In addition to provide legal certainty, the purpose of land registration is to provide legal protection to the right holder of a parcel of land, apartment unit and other registered rights in order to prove that he is the right holder in question, so as to provide information to the interested parties including the Government so that they can easily obtain the required data.

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