

The Problem of Ownership of Land Rights is Reviewed Based on the Law and Government Regulations

Cecep Miptahuddin

Bandung Islamic University, Bandung, Indonesia

Email: Cecepmiptahudin84@gmail.com

ABSTRACT

The issue of land rights ownership is intricate and multifaceted, particularly within the realm of agricultural law in Indonesia. This article delves into and scrutinizes various problems related to land rights ownership, emphasizing the legal framework established by the Basic Agrarian Law (UUPA) and relevant government regulations. Utilizing document analysis and literature review as research methods, the study examines a variety of cases, related research, and pertinent legal texts. The analysis uncovers several issues, such as land rights conflicts, ambiguities in legal interpretation, administrative hurdles, and challenges in practical implementation. The research identifies several root causes of these problems, including the disparity between formal law and informal practices, as well as a need for more awareness regarding rights and obligations concerning land ownership. In conclusion, the article underscores the necessity for concrete measures to address these issues, such as legal reforms, heightened public awareness, and enhancements to the land administration system to foster justice and legal certainty for all stakeholders.

Keywords: Evidence of Land Rights, Land Rights Problems, Ownership of Land Rights

INTRODUCTION

Land plays a crucial role in the development of a country (Bakker, 2023). Article 33, paragraph (3) of the 1945 Constitution states that the earth, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people, illustrating this principle in action. In alignment with the constitution, the Government of the Republic of Indonesia enacted Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA) as the legal foundation governing land rights and responsibilities (White et al., 2023). According to the General Explanation section, point I of the First Roman Paragraph of the Basic Agrarian Law is clarified as follows (Hidayanti et al., 2021):

"In the Republic of Indonesia, the structure of people's lives, including the economy, is mainly still agricultural, earth, water, and space patterns, as a gift of God Almighty has a very important function to build a just and prosperous society as we aspire to. In that case, the current Agrarian Law, which should be one of the important tools for building a just and prosperous society, turns out to be even

The Problem of Ownership of Land Rights is Reviewed Based on the Law and Government Regulations

the opposite. In many ways, it is an obstacle to the achievement of the above ideals."

In the Republic of Indonesia, where the people's livelihood, particularly the economy, is primarily based on agriculture, land, water, and space—gifts from God Almighty—play a crucial role in developing the just and prosperous society we aspire to. Consequently, the current agricultural law must serve as a significant instrument for creating a widespread, just, and prosperous society.

Following the government's enactment of the UUPA, a series of regulations transformed land ownership from communal to private (Sholahudin et al., 2020). This shift ushered in a new era in land tenure, significantly influencing Indonesia's economic, social, and political development. This dissertation aims to examine the major impacts of the land ownership changes brought about by the UUPA on the community and national progress (Suartining & Djaja, 2023).

The enactment of Law Number 5 of 1960 concerning Agrarian Principles (UUPA) on September 24, 1960, brought significant changes to Indonesia. This law aimed to eliminate the distinction between customary law and Dutch civil law in land matters. Article 33, paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) governs the UUPA. This Article essentially states that to enhance the prosperity and welfare of the people, the state has the right to control the earth, water, and natural resources therein. Consequently, the people are responsible for utilizing natural resources, including land and water, in the most beneficial way (N. L. A. Sari, 2021).

Meanwhile, the state holds the authority to oversee the utilization of Indonesia's natural resources to enhance the welfare of its people. Given that land is a crucial source of livelihood, land regulation is essential. Consequently, the government plays an active role in shaping land policy in Indonesia, aiming to improve community welfare (Suartining & Djaja, 2023).

According to Hjalager (2020), land holds two crucial roles in community life: as a capital asset and as a social asset. As a capital asset, land serves as the foundation for development and has become a vital component of the economy. Besides its significant role in the economic structure, it supports various economic development activities. As a capital asset, land greatly contributes to the progress and development of a region (NDI, 2024).

As a social asset, land acts as a social binder in community life. It is not just a place to live but also a space for social and cultural interaction. Land encompasses areas for households, agriculture, and other social infrastructure, which are integral to community life. Thus, land serves as both a physical entity and a social bond that unites people. This is reflected in Law Number 11 of 2005 concerning the Ratification of the International Covenant on Economic, Social, and Cultural Rights (Zhang et al., 2021).

To benefit from land rights ownership, one should exercise authority over the land, but this must be accompanied by equitable distribution of ownership. Individuals should manage and utilize their land, ensuring compliance with laws, regulations, and community norms (Meckelburg & Wardana, 2024a).

The desire to own land is driven not only by economic motives but also by the natural wealth it holds. This drive can manifest in activities like forest clearance, establishing plantations, purchasing land from original owners, or employing various other strategies. Land, being a natural resource with economic and biological potential, plays a pivotal role in promoting environmental sustainability.

In this context, land is not merely a feature on a map but an integral part of the social and economic fabric of a community. Understanding land as both a social and capital asset enables communities to formulate policies and practices that promote sustainable land use, safeguard ownership rights, and enhance overall welfare (Fernandes-Tavares et al., 2024).

The enactment of the UUPA marked the inception of Indonesia's agrarian law policy, which regulates land governance. It addresses the legal relationship between the Indonesian state and land, as well as the legal relationship between Indonesian citizens and land (Lumbanraja, 2023). The government has taken concrete steps by implementing land registration in accordance with Article 19 of the UUPA, which mandates comprehensive land registration across Indonesia according to government regulations. This measure is intended to ensure legal guarantees for land rights.

Furthermore, Government Regulation Number 10 of 1961 elaborates on Article 19, and it was later revised to become Government Regulation Number 24 of 1997 concerning Land Registration. This regulation comprehensively addresses all aspects of the land registration process and applies to all land-related matters throughout Indonesia.

The most recent regulation, issued by the government as a replacement for Law Number 11 of 2020 concerning Job Creation, is Government Regulation Number 18 of 2021 concerning Management, Land Rights, Flats Units, and Land Registration. This regulation supersedes Government Regulation Number 24 of 1997 concerning Land Registration, with Article 95 specifying that written evidence is required for former land held under customary rights.

Essentially, land rights represent the legal relationship between individuals or legal entities and land. This legal relationship involves subjects (individuals or legal entities) and objects (land or land rights), with subjects holding land rights over land. Land rights are established through decisions made by authorized institutions and specific legal deeds or events.

Researchers argue that the government needs help in regulating land ownership rights, leading to overlapping regulations. This ambiguity is evident in the standards for land ownership documentation, despite the UUPA stating that certificates are the strongest and most comprehensive evidence. Government Regulation Number 18 of 2021 allows for proof of land ownership and similar documents to be used as evidence of property rights for five years after the regulation is enacted. However, the regulation needs to clarify whether these documents hold the same strength and comprehensiveness as certificates. This ambiguity creates uncertainty that can impact legal certainty regarding land titles, which are considered more robust and complete evidence compared to proof of land ownership, which is accepted as proof of title for a limited period.

The Problem of Ownership of Land Rights is Reviewed Based on the Law and Government Regulations

Disputes often arise in communities when Proof of Land Ownership or Letter C is used, as there is uncertainty regarding certificate ownership. This is because Proof of Land Ownership cannot be enforced after the enactment of the UUPA. Supreme Court Decision No. 34/K/Sip/1960, dated February 19, 1960, clarified that a land certificate or Proof of Land Ownership is not proof of land ownership rights recognized by the state. Instead, Proof of Land Ownership is primarily used for paying land and building taxes and for determining if someone is occupying land, often providing explicit information.

RESEARCH METHODS

This study uses a normative legal approach (normative juridical), which focuses on secondary data. According to (Haghani, 2023), this approach is used to examine the issue of transferring responsibility in bank credit agreements through exoneration clauses linked to the principle of balance. This normative legal research is focused on the study of literature and analysis of applicable legal rules and their application in practice.

The type of research used in this dissertation includes library research and field research. Literature research is carried out by collecting data and information through books, newspapers, tabloids, magazines, and other written data relevant to the problems discussed. Field research is conducted by conducting direct interviews to obtain objective and clear data. These interviews are conducted with judges and legal practitioners who are competent in their fields.

Data sources in this study are divided into two types: primary data and secondary data. Primary data is obtained directly from competent judges and legal practitioners. Meanwhile, secondary data is complementary data obtained from various books, magazines, newspapers, and other written sources related to the research topic (Pratikno, 2020).

Data collection techniques used include interviews and questionnaires. Interviews are conducted by creating interview guidelines that are submitted to officials in the court and legal practitioners. Questionnaires were distributed to respondents to collect public opinion which was used as a research sample.

The process of data analysis is carried out by qualitative descriptive methods, where the collected data is simplified into a form that is easier to read and interpret. This analysis aims to understand in depth how the transfer of responsibility in bank credit agreements through exoneration clauses is related to the principle of balance, based on data obtained from literature and field research. According to Pappas et al. (2021), this data analysis involves simplifying data into a form that is easier to read and interpret.

RESULTS AND DISCUSSION

A. The Applicability of Proof of Land Ownership in the Recognition of Land Rights in the Community.

Sumardjono, in "Reorientation of Land Policy," highlights that the fundamental principles of the UUPA can guide social justice in the land sector. These principles include state tenure, respect for the land rights of customary law communities, the social

function of all land rights, land reform, planning the use and preservation of land, and nationality. These principles are then integrated into other laws and policies. However, it is observed that many general rules benefit smaller groups of people and overlook larger groups (Roestamy et al., 2022).

Furthermore, community involvement remains crucial for regional development. Sarjita emphasizes three key considerations for regional development: economic sustainability, social sustainability, and ecological sustainability (Jimenez-Ayora et al., 2024; Liu et al., 2024; Mursyid et al., 2021).

Recognition of land rights in society affects the validity of Proof of Land Ownership. This can lead to conflicts over land ownership between owners holding Proof of Land Ownership and individuals with stronger legal documents supporting their claims to the land (Sugeng, 2017). In Indonesia, particularly in rural areas, it is common for land rights to be exploited in illegitimate ways. Proof of Land Ownership is a document issued by village or urban village officials to demonstrate land ownership. Boedi Harsono (2013) notes that this document typically includes details about the landowner, land area, boundaries, and other pertinent information.

While Proof of Land Ownership is not an official land certificate issued by the National Land Authority, many consider it strong evidence of land ownership. Several factors contribute to this perception, including challenges in obtaining official land certificates from the government, complex land registration processes, and a need for more awareness regarding the significance of official documents as proof of land ownership (Arrizal et al., 2024). Additionally, reliance on Proof of Land Ownership can hinder landowners from accessing certain services and facilities, such as bank loans. Therefore, the government and relevant institutions must raise awareness about the importance of possessing an official land certificate as valid proof of land ownership. This effort can streamline the land acquisition process, enhance the security of land rights, and mitigate land ownership issues (Dhiaulhaq & McCarthy, 2020).

Suartining et al. (2023) conducted an analysis of the recognition and use of Proof of Land Ownership in society, examining factors influencing its practice. They also analyzed the role of local institutions in recognizing and enforcing land rights based on this document. The applicability of Proof of Land Ownership is a focal point in the discourse on land ownership within communities. This informal document, commonly utilized to assert land rights at the local level, raises questions about its legitimacy within the broader legal framework.

Despite its widespread acceptance in society, particularly in rural areas, the validity of Proof of Land Ownership as a means for official institutions, including government and banking entities, to recognize land rights remains subject to debate. While local communities often view Proof of Land Ownership as evidence of legitimate ownership, its adequacy for broader legal recognition is often questioned (Lumbanraja, 2023).

It is crucial to understand the social, cultural, and economic factors influencing Proof of Land Ownership practices in society. Efforts should be directed towards integrating Proof of Land Ownership into a more formal and nationally recognized legal

The Problem of Ownership of Land Rights is Reviewed Based on the Law and Government Regulations

framework. This integration would provide landowners with legal certainty and access to a wider range of services and resources (Lubis & Ramadhani, 2021).

It's important to approach the integration of Proof of Land Ownership into a formal system with caution, ensuring active participation from diverse stakeholders, including government, banking institutions, and local communities. Measures should be taken to prevent the marginalization of current Proof of Land Ownership holders during the transition to a more formal system. Understanding the impact of Proof of Land Ownership on land rights recognition in communities will help formulate more sensible and equitable policies, ensuring that land rights are allocated fairly and sustainably to all.

Initially, Proof of Land Ownership was utilized as preliminary evidence for land rights registration. However, it is important to note that Proof of Land Ownership serves as a basis for collecting land and building taxes. In the land registration process, Proof of Land Ownership functions as a data source for issuing land certificates. To ensure that the land has not been previously certified and that no objections have been raised regarding its ownership, the evidence provided in Proof of Land Ownership is verified and compared with records in the village where the proof was registered. If these conditions are satisfied, the certification process can commence within six months to a year.

Thus, Proof of Land Ownership is only evidence of guidance, not proof of ownership rights. Therefore, it must be supported by additional evidence, both oral and written. The uncertain status of land indicated in Proof of Land Ownership during the conversion affirmation registration process must be determined by the local Land Office, the competent authority. Proof of Land Ownership and customary property rights have yet to be officially recorded. Therefore, property rights holders—individual Indonesian citizens and entities appointed by Presidential Decree 38/1963—must be eligible to purchase through a Deed of PPAT (Land Deed Officer).

As per Presidential Decree 36/1998 regarding the Control and Utilization of Abandoned Land, if an individual or government entity intends to purchase land, the rights must be released before the land is categorized as state land. Subsequently, an application for rights aligned with the land's designation and requirements must be submitted. Failure to apply for rights and register them may result in the land being classified as wasteland. However, under Article 26 paragraph (2) of the UUPA, if land registered with Proof of Land Ownership is purchased using a Deed of Sale and Purchase from a PPAT, the transaction is deemed legally void, and the land becomes state property.

Apart from certificates, Proof of Land Ownership or Proof of Tax Payments holds significant weight in legal proceedings. The judiciary has adjudicated numerous disputes involving Proof of Land Ownership against Certificate land, often ruling in favor of Proof of Land Ownership. In land law, evidence is crucial for providing legal certainty and protection to land rights, flat owners, or holders of other registered rights, enabling them to establish their rights easily.

The land rights that existed before the enactment of the UUPA were previously governed by both Civil Law (BW) and Customary Law, as stipulated in Indonesia's Conversion Provisions. Essentially, Government Regulation 24/1997 aims to provide

legal security for landowners in Indonesia. The final stages of the land registration process outlined in this Regulation are as follows:

- a. Land rights are established with the issuance of a land certificate during the initial registration process.
- b. During the transition process, the transfer, encumbrance, and removal of land rights must be recorded in the land book register and, eventually, must be reflected in the land certificate.

The law should protect land rights that are documented with proof of land ownership. An individual who possesses land can demonstrate ownership of it for over twenty years and can provide additional evidence such as Land Certificate D, Proof of Land Ownership, Land Title Document, Land Deed, Verponding Indonesia, or other relevant documents. Additionally, a transfer of rights deed must be authenticated by the customary village chief or urban village head or by a PPAT (Land Deed Officer) if the land has yet to be officially recorded.

In the process of land registration, tax marks such as the Land Tax Map, Proof of Land Ownership, Land Deed, IPEDA, and Verponding Indonesia cannot serve as standalone proof of land rights. They must be accompanied by a written statement from the urban village head or village head, endorsed by the sub-district head, and publicly announced. According to Article 24 paragraph (1) of the Land Registration Government Regulation, written evidence, including photocopies of Proof of Land Ownership, is required for registering land rights derived from the conversion of old property rights. Therefore, Proof of Land Ownership can be considered as written evidence that fulfills one of the conditions for the conversion of customary land.

Our previous discussion regarding the conversion of land rights aligns with the principles of legal certainty outlined in Article 19 of the UUPA, which forms the basis for land registration. The implementation of land registration, as mandated by Article 19 of the UUPA, aims to provide legal certainty and protection to land rights holders (Hidayanti et al., 2021). This article directs the government to conduct land rights registration across Indonesia, reflecting the government's supreme authority over land. Additionally, Articles 23, 32, and 84 of the UUPA stipulate that land rights, including Property Rights, Business Use Rights, and Building Use Rights, must be registered for each transfer, deletion, or encumbrance. This registration is obligatory for rights holders to ensure legal certainty (Yubaidi, 2020b).

The state's recognition of individuals or legal entities' rights to land entails its responsibility to ensure the legal protection of those rights (Koroso, 2023). According to Boedi Harsono, Proof of Land Ownership, Land Certificate Tax, and Land Title Document, which serve as instruments of imposition and identification as per Article 19 paragraph (2) letter C of the UUPA, are integral parts of the current land registration process. This process culminates in the registration of land in legal cadasters, with the final result being strong evidence known as a certificate, in accordance with the provisions of Article 19 of the UUPA and PP 24/1997.

The Problem of Ownership of Land Rights is Reviewed Based on the Law and Government Regulations

According to Article 19 paragraph (2) of the UUPA and Article 31 of PP 24/1997, a land certificate serves as proof of land ownership. The transfer of land certificate D or Proof of Land Ownership is typically conducted in the presence of the lurah or village head. This process often involves the division or subdivision of large land tracts into smaller plots. The term "land registration" originally referred to land titles based on the land certificate D or Proof of Land Ownership in conventional land law ((Margareta & Huda, 2023).

Taxation, also known as *Verponding*, does not constitute evidence of disputed land rights. However, in the absence of other evidence, Proof of Land Ownership and similar documents can be used as indicators. The holder of the land right is the individual whose name appears on the Proof of Land Ownership (Meckelburg & Wardana, 2024b). This highlights that Proof of Land Ownership acts as proof of tax payment and as a sign of land ownership recognized by the community before the UUPA was enacted. Although Proof of Land Ownership is no longer issued after the enactment of the UUPA, its existence is still acknowledged as it is a requirement for converting customary land (McCarthy et al., 2022). Therefore, Proof of Land Ownership serves solely as evidence for the owner of the land in question, not as proof of land ownership. On the other hand, certificates obtained through the land rights registration process serve as strong evidence of land ownership.

B. Recognition of proof of land ownership as ownership of land rights in laws and regulations.

In Indonesian legislation, the role of the National Land Authority and various agrarian laws refers to the recognition of proof of land ownership as land ownership. Land certificates issued by National Land Authority are not known as proof of land ownership. However, the law recognizes this document as one of the proofs of community land ownership (Lumbanraja, 2023).

Law Number 5 of 1960 concerning Agrarian Principles is one of the most important laws in this regard. This regulation provides for the recognition of land rights, including proof of land ownership, as a form of legal land rights. However, this regulation also emphasizes the importance of the land registration process in the land registration system carried out by National Land Authority to obtain valid land certificates.

Government Regulation Number 24 of 1997 concerning Land Registration is another law related to the Basic Agrarian Law. This regulation regulates the rules and process of land registration in Indonesia. Although this process aims to increase legal confidence about land ownership, the regulation also recognizes documents such as proof of land ownership, which can be used as proof of land ownership.

Local regulations, such as local regulations on development permits, can also recognize proof of land ownership as land ownership. Local governments sometimes recognize that proof of land ownership is one of the requirements for obtaining a development permit. This shows that proof of land ownership is still considered strong enough evidence for the community to own land.

Although various laws and regulations regulate the recognition of proof of land ownership as ownership of land rights, it is important to remember that obtaining a valid

land certificate from the National Land Authority is still a recommended course of action. In addition to helping avoid future conflicts, these official land titles provide stronger legal certainty about land ownership. Therefore, although proof of land ownership is legally recognized, it is important to complete the land registration process in the land registration system supervised by the National Land Authority.

There is a written juridical instrument referred to as the "old" land rights (Article 24 PP 24/1997), which is recognized by law as written evidence of ownership of land rights. Furthermore, the juridical instrument regarding the existence of detailed proof of ownership is regulated in the Regulation of the Minister of Agrarian State (PMNA) / Head of the National Land Authority (KBPN) Number 3 of 1997.

In article 24 of PP 24/1997 and Article 60 of PMNA/KBPN Number 3 of 1997, along with the explanation of the article, it is stated that the old ownership evidence is: Grosse / Copy of Eigendom Deed, Proof of Property Rights issued based on the Swapraja Regulation, Proof of Property Rights issued based on Agrarian Minister Regulation Number 9 of 1959, Decree Granting Property Rights from authorized officials both before and since the enactment of the Law, which is not accompanied by the obligation to register the rights granted, but has fulfilled all obligations referred to therein, Land certificate D, Proof of land ownership, Land deed, and Verponding Indonesia before the enactment of PP 10/1961, the deed of transfer of rights under the hand affixed with a testimony mark by the Head of Customary/Village/Village made before the enactment of this Government Regulation accompanied by the basis of the transferred rights, transfer deed made by the Land Deed Making Officer (PPAT) whose land has not been recorded accompanied by the transferred right base, Waqf Pledge Deed / Waqf Pledge Letter made before or since the start of implementation Government Regulation No. 28 of 1977 accompanied by the waqf rights base, Auction Minutes, Letter of Appointment for the Purchase of Land Caveling in lieu of land taken by the government, Certificate of Land History that has been made by the Head of the United Nations Office accompanied by the basis of transferred rights, other forms of written evidence with any name as referred to in Articles II, VI, and VII of the conversion provisions.

However, Article 97 of PP Number 18 of 2021 regulates the old proof of rights, stating that certificates such as land, compensation, village, or similar issued by the head of a village, lurah, or sub-district can only be used for land registration.

A state of certainty concerning a provision or statute is called self-certainty. Law, on the other hand, is defined as the overall rules and norms that apply in social life, which can then be forced to be implemented through sanctions (Lubis & Ramadhani, 2021). Certificates made by government agencies serve as proof of ownership of inviolable land rights. Therefore, its certainty in certificate law can be understood as follows. However, as explained in Article 32 Paragraph (1) of PP No. 24 of 1997, a certificate is strong proof as long as the physical and juridical data contained therein are accepted as true data if it cannot be proven otherwise. It can be concluded that, regardless of the reason why it occurs, the certificate as a product of a government organization may need to be revised. As a result, the legal meaning of the certificate itself can be reduced (Yubaidi, 2020a).

The Problem of Ownership of Land Rights is Reviewed Based on the Law and Government Regulations

Before the UUPA, proof of land ownership was still considered as proof of land rights. However, after the issuance of UUPA and PP No. 10 of 1961, as amended by PP No. 24 of 1997 concerning Land Registration (hereinafter referred to as PP Land Registration), only certificates of land rights can be accepted as proof of ownership of land rights, as discussed earlier (Hidayanti et al., 2021). However, the majority of people still believe that proof of land ownership indicates land rights. It doesn't matter whether the proof of land ownership was made before 1960 or after its legal status. What is clear is that if there is a sleigh or certificate on certain land, the owner already feels safe. Juridically, proof of land ownership was recognized as a sign of proof of land rights before the birth of the UUPA; however, once again, proof of land ownership ceased to apply after the enactment of the UUPA. The Supreme Court of the Republic of Indonesia Decision No. 34/K/Sip/1960, dated February 19, 1960, affirmed that a land certificate or proof of land ownership (proof of United Nations acceptance) cannot be considered evidence of land rights.

According to Decree Number 5 of 1999 of the State Minister of Agriculture/Head of the National Land Authority, customary land rights, defined in Indonesian as "customary rights," are parcels of land owned by a particular customary law community as customary rights over certain areas that constitute the environment of its citizens. Indigenous peoples have the right under customary law to own certain areas that constitute the environment of their citizens, and this right allows Indigenous peoples to The communities and resources mentioned above have a strong relationship, both internally and externally, between those peoples and the territories concerned.

In society, the term "proof of land ownership land" is also known as "customary land." This term refers to land that has not been registered or certified to the local Land Office and has not been converted into one of the specific rights, such as property rights, building use rights, use rights, or business rights. They have many names, such as Proof of land ownership, Land certificate D, Detailed Record, Land deed, etc. "Customary Land" is a term that refers to original land that has not been converted into land that has certain rights such as property rights, building use rights, use rights, and business rights. Some terms used before the enactment of the UUPA are as follows: Land deed means the right holder has Land Letter deed, Land Detailed record means the right holder has Land Letter Detailed record, The Proof of land ownership means the right holder has Land Letter Proof of land ownership, Land Letter C means the right holder has Quotation Letter C, and Land certificate D means the right holder has Land Transfer Document Land certificate D. These terms are still used The landholder mentioned in upon having to pay Land Tax. After the enactment of the UUPA, there is still a past tax book in each village office. In addition to the Village Land Book, there is also a Land and Building Tax Register Book, which contains a list of taxpayer names (I. Sari, 2020).

Many people still believe that proof of land ownership is proof of land ownership after the Basic Agrarian Law because this assumption still exists in society and government, including in the judiciary. The community feels safe because it has proof of land rights.

Proof of land ownership soil usually passes from hand to hand, into a very large land that is then divided into several very small plots of land. In most cases, the transfer of rights to proof of land ownership land is carried out before the Lurah or Village Head. Many are also done based solely on the trust of the parties so that no papers can trace their ownership.

For the first time, in the registration of title to land, proof of land ownership in the form of proof of land ownership was used as preliminary evidence to obtain land rights. However, many people need to realize that proof of land ownership is only used as a basis for collecting land and building taxes, so people may not know it. During the land registration process, proof of land ownership is used as a data source for the issuance of land certificates. To ensure that the land has never been certified and that no party has raised any objection about the ownership of the land, evidence in the form of proof of land ownership will be checked and matched in the village where the proof of land ownership was recorded. The certification process can begin within six months to a year if these conditions are met.

Thus, Proof of land ownership is only evidence of guidance, not proof of ownership of rights. Therefore, it must be supported by additional evidence, both testimony and writing. Therefore, the unclear location of Proof of land ownership land in the registration process of conversion affirmation must be measured by the local Land Office, which is the competent authority. Proof of land ownership and customary property rights are not recorded. Therefore, property rights holders—single Indonesian citizens and entities appointed by PP 38/1963, must be eligible to purchase through a PPAT deed.

C. Certificate as a Basis for Ownership of Land Rights and Its Problems.

According to article 3 of Government Regulation Number 24 of 1997 concerning Land Registration, one of the purposes of land registration is to provide legal certainty and legal protection to holders of land rights, housing units, and other registered rights so that they can easily prove that they are the holders of the rights concerned.

Although the certificate has been recognized by the UUPA, it does not guarantee the legal security of the landowner because the regulation itself provides an opportunity for other parties who feel they own the land to sue the party whose name is listed in the certificate civilly to the General Court, sue the Head of National Land Authority or the Head of the Land Office concerned to the Negarta Administrative Court, or sue technical problems in the administration of its issuance.

The certificate can be used as absolute proof of rights if it meets the requirements if the certificate is validly issued in the name of an individual or organization, the land is acquired in good faith, the land is actually controlled, and within 5 (five) years from the issuance of the certificate, no one raises a written objection to the certificate holder and the Head of the local District/City Land Office or files a lawsuit with the court regarding land tenure or the issuer certificate (Permadi, 2023).

The land rights of a person or legal entity must be proven. There are many tools of evidence used to prove land ownership. However, the land certificate, mentioned in

The Problem of Ownership of Land Rights is Reviewed Based on the Law and Government Regulations

Article 19 paragraph (2) letter c of the UUPA, is the strongest evidence showing ownership of the right to the land. A certificate is considered a strong evidentiary tool because the physical and juridical data contained in it is considered correct as long as it cannot be proven by other evidence, be it a certificate or other than a certificate. To obtain a land certificate, the land must be registered with the Land Office.

Article 23 of Government Regulation Number 24 of 1997 concerning proof of ownership of land rights stipulates that the proof of new rights is carried out in the following ways: 1. Determination of the granting of rights from officials authorized to grant relevant rights according to applicable provisions if the granting of rights comes from Government Regulation Number 40 of 1996 and Regulation of the Minister of Agrarian State/Head of National Land Authority Number 9 of 1999 regulates the granting of Building Use Rights or Right to Use Land Rights Belonging to the holder of Property Rights (Hartanto Andy, 2009).

Article 32 Paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration is an explanation of the provisions of Article 19 Paragraph (2) point c Article 23 paragraph (2), Article 32 paragraph (2), and Article 38 paragraph (2) of the UUPA, which states that land registration produces a valid certificate as strong evidence showing that the information contained therein has legal force and must be accepted as correct information during certain conditions.

One of the areas for improvement of Article 32, paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration is that the state needs to guarantee the correctness of the physical and juridical data presented. Certificate owners have no guarantee because they may get a lawsuit from other parties who feel aggrieved by the certificate. This weakness is usually overcome by using acquisitive vernet or possession-adverse institutions. However, because customary law does not recognize these two institutions, we cannot use them in our country's land law. In fact, customary law already has a *Rechtsverwerking* Institution to deal with the problem of the system of negative publication of land registration.

Land certification, issued by the National Land Authority, indicates that a particular person or legal entity has rights to a piece of land. As a strong legal basis for establishing land rights and providing legal security to the owner, this certificate contains important information such as the owner's identity, area, boundaries, and rights attached to the land.

Although land titles play an important role in establishing ownership of land rights, there are several issues associated with the use of land titles: 1. Damage or Loss: Land titles can be damaged or lost, which makes it difficult for landowners to prove that they are landowners. Obtaining a new copy of the land title can take time and cost. 2. Proof of Ownership: Some landowners have to fight for their rights in court because of claims or disputes over land. 3. Inaccurate Record keeping: The information in land certificates could be more accurate or misrecorded, resulting in 4. Complicated Fees and Procedures: Registration and acquisition of land certificates are sometimes very expensive and have complicated procedures. This can lead to uncertainty about land

ownership. 5. Unregistered Land Tenure: Many lands in Indonesia have yet to be registered with the National Land Authority, which means they do not have official land titles. This can be a problem for people in rural or low-income areas. This can lead to legal uncertainty and land conflicts.

To overcome this problem, it is necessary to simplify land registration procedures, improve the accuracy of land registration, understand the importance of having land titles, and better legal protection for landowners. Thus, land titles can be a more solid basis for establishing land ownership and provide better legal security for those who own them.

Land title certificates can basically be regarded as written evidence that has perfect evidentiary power, because the authentic form of deed must be made in accordance with the law and issued by an authorized general official.

The land title certificate should be considered as complete evidence in case the counterparty cannot prove otherwise. Therefore, no additional evidence is needed to support it. A decision by a District Court with permanent force establishing that the title to the land is owned by the prevailing claimant or a court decision with permanent legal force invalidating the title certificate are examples of additional evidence that can undermine the legitimacy of the title certificate.

The principle of consensus deliberation, contained in the fourth precept of Pancasila, is used in Land Registration as a basis for the application of agrarian law to reduce such disputes. The aim is to prevent future land conflicts and disputes by guaranteeing legal certainty about the location and boundaries of land registration objects. The principle of consensus deliberation can help bordering parties reach an agreement and set the boundaries of a piece of land.

Only some understand the function of land title certificates as strong evidence in case of disputes. This is due to the fact that various types of land certificates, such as land certificates, land processing certificates, and other certificates, are issued and known to the local government. However, it is clear in the UUPA and PP No. 24 of 1997 that certificates serve as strong evidence to ensure legal certainty over land tenure registered as property rights, building use rights, use rights, and other rights. This does not mean that evidence other than the certificate cannot be used as proof. According to Budi Harsono (2013), information about physical and juridical data in certificates must be in accordance with relevant measuring letters and land books so that certificates as proof of letters have greater strength than other types of letter evidence. Therefore, all information contained in the certificate has strong evidentiary strength as long as there is no other evidence to deny it in cases where the certificate is the subject of a lawsuit or lawsuit in court.

The negative system used in Indonesian land registration aims to provide legal protection to native landowners, according to Thamrin et al. (2021), Because the negative system uses the principle of *Nemo plus juris*. Since known land data is published, there is legal certainty in land registration. In order to grant land titles to land applicants, land registry officers actively investigate the requested information. However, the land certificate given in the name of the applicant, who is the owner of the land listed in the

The Problem of Ownership of Land Rights is Reviewed Based on the Law and Government Regulations

certificate of title to the land, cannot be considered as absolute evidence. Given the original landowner the opportunity to prove that they are the landowner in the general court

According to the UUPA statement, certificates as a means of land registration provide strong evidence, which means that in the event of a land dispute, the dispute must be resolved in a public court, i.e., a district court, where one can pursue legal remedies to fight, claim, or defend their rights (Florianus, 2007). In court, any person or party to a dispute can dispute the correctness of a person's land certificate. The certificate can be canceled if he can prove that the title to the land needs to be corrected.

According to Article 32, paragraph (2) of PP No. 24 of 1997, certificates are a strong evidentiary tool, and the purpose of land registration is to ensure legal certainty in the land sector to be clear and significant, no matter what publication system is used. Such provisions maintain the principle of balanced protection. Soejono and Abdurrahman (2003) were a little pessimistic about the five-year deadline given to other parties to file a lawsuit after the certificate was issued. They wonder whether the deadline is enough to be the basis or longer, given the conditions and situation in Indonesia, so the deadline may not match reality.

D. National Land Authority's Responsibility for the Cancellation of Land Title Certificates in Customary Land Disputes Based on Proof of Land Ownership

Responsibility is defined as man's awareness of his deliberate actions or deeds. Every human being is burdened with responsibility because responsibility is natural and has become part of human life. If studied, responsibility is an obligation that must be borne as a result of the actions of people who do something (Lubis & Ramadhani, 2021).

The National Land Authority can be liable in several forms (Neilson, 2022): a) In cases where a claim over a land title dispute has been accepted in the TUN court and found in maladministration. There is potential criminal liability if there is a criminal or civil element if there is an element of unlawful acts.

Institutional Responsibility in cases where a land title dispute lawsuit is accepted by the TUN court, and there is no evidence of maladministration. If an element of violation of law is found, it can involve administrative liability or civil liability.

By prioritizing a sense of justice and respecting the rights and obligations of each party, the National Land Authority seeks to resolve land disputes in accordance with applicable laws and regulations. The National Land Authority is responsible for mediating, negotiating, and resolving double certificate disputes (Sahide et al., 2020).

Due to the poorly functioning land registration system, the National Land Authority is solely responsible for the issuance of dual certificates. The National Land Authority is also responsible for the certificates it issues, as the authority to issue certificates rests with the National Land Authority. In the system of absolute responsibility, the National Land Authority is liable both in and out of court in the event of a lawsuit regarding land rights. If double certificates lead to absolute land disputes, then the National Land Authority is responsible.

In the case of customary land disputes based on proof of land ownership, the National Land Authority is responsible for canceling the title certificate to the land. Customary land disputes are disputes involving claims to land that are based on the customs and customs of indigenous peoples in the territory.

First of all, National Land Authority is responsible for verifying and verifying land ownership claims submitted by parties involved in customary land disputes. This is done by examining the documents on which ownership claims are based, including proof of land ownership issued by the local village or urban village.

In cases where land title certificates are issued by the National Land Authority, the National Land Authority is responsible for helping to resolve customary land disputes. This process may include the use of established legal channels or mediation between the parties to the dispute.

National Land Authority is responsible for canceling land title certificates if, in the dispute resolution process, it is proven that the certificate was issued on the basis of controversial or invalid proof of land ownership. According to applicable laws and regulations, certificate cancellation must be carried out openly and based on strong evidence.

In addition, the National Land Authority is also responsible for providing protection to parties affected by certificate cancellation, including both original land owners and parties who legally obtained the certificate from the National Land Authority. This protection can be in the form of compensation or reimbursement for losses that may be suffered by the party affected by the cancellation of the certificate.

Overall, if there is a customary land dispute based on proof of land ownership, the National Land Authority is responsible for canceling the title certificate to the land. These tasks include verification, dispute resolution, controversial certificate cancellation, and providing protection to affected parties. The aim is to ensure justice and legal stability in terms of land tenure and respect for the legitimate rights of indigenous peoples.

The cancellation of land rights is an action justified by Article 1 number 12 PMNA/KBPN No. 3 of 1999, which reads as follows: "Cancellation of a decision regarding the granting of land rights because the decision contains a legal defect in its issuance or implements a court decision that has permanent legal force." Thus, the cancellation of the certificate is on the basis of administrative legal errors and the implementation of court decisions that have permanent legal force. According to Article 105 PMNA/Head of National Land Authority Number 9 of 1999, land rights can be canceled by a decision of the Head of the National Land Authority or given to the Regional Office or appointed official. Therefore, the only way to cancel land rights is to issue a decree stipulating the cancellation of these rights, issued by the authority regulated in PMNA/Head of National Land Authority Number 9 of 1999.

According to Article 107 PMNA/Head of National Land Authority No. 9 of 1999, cancellation of land rights due to administrative law defects is carried out if there are: 1. Procedural errors; 2. Misapplication of laws and regulations; 3. Error of the subject of rights; 4. Error of the right object; 5. Error type of rights; 6. Extensive miscalculation; 7.

The Problem of Ownership of Land Rights is Reviewed Based on the Law and Government Regulations

Overlapping land rights; 8. Physical or juridical data errors; or 9. Other errors stem from administrative legal errors.

The beginnings of such problems can be traced from the registration of land to its issuance of certificates, leading to disputes over land ownership and, more specifically, issues of certificates. Another factor that causes land disputes is irregular land administration. Disputes between residents fighting over land rights will occur due to unclear and undocumented evidence of land tenure.

National Land Authority will handle the cancellation of the certificate based on the reasons submitted by the applicant, but what if the PTUN decision causes the cancellation of the certificate for various reasons? Look at some of the rulings above that became the basis for certificate cancellation for various reasons, and the National Land Authority is clearly a defendant in the decision.

According to Article 105 PMNA/Head of National Land Authority Number 9 of 1999, land rights can be canceled by a decision of the Head of the National Land Authority or given to the Regional Office or appointed official. Basically, land rights can only be canceled by the issuance of a cancellation decree permitted by the delegation of authority regulated in PMNA/Head of National Land Authority Number 9 of 1999. This cancellation decree can only be issued based on the applicant's application, as stated in Article 124 paragraph (1) PMNA/Head of National Land Authority Number 9 of 1999, and in Article 124 paragraph (2), Court Decision

The above problems are only administrative, legal errors committed by the National Land Authority. Therefore, its resolution can be reached through administrative remedies or, perhaps, through court legal remedies—responsibility for certificates issued by the National Land Authority. Regulation of the Head of the National Land Authority of the Republic of Indonesia Number 3 of 2011 concerning Management, Assessment, and Handling of Land Cases Article 54 paragraphs (1) and (2) stipulates that: (1) National Land Authority Indonesian Republic is responsible for implementing court decisions that have obtained permanent legal force unless there is a valid reason not to implement them. The valid reasons, as mentioned in paragraph (1), include: 1. there are other decisions relating to the object of the decision in question.

On the basis of the above law, it can be understood that National Land Authority can only implement court decisions based on the decision of the TUN Court with permanent legal force. However, subsection (2) provides an exception for the reasons mentioned earlier.

It is very clear that the National Land Authority RI is not only assigned to carry out land administrative tasks ranging from land data collection to certificate issuance but also assigned to implement TUN court decisions. It seems that this task does not make sense because the National Land Authority is the only body or institution that must be responsible (defendant) in the case of TUN, especially with regard to certificates. However, since the National Land Authority is the authorized body to issue certificates, the National Land Authority must also handle their revocation or cancellation.

Some of the rights that are most recognized and used by the community in practice in the field are Property Rights, Business Use Rights, Building Use Rights, and Use Rights, each of which has its characteristics, purpose, and duration. One of the frequent problems in practice is when a Right to Build certificate may have legal consequences because the registration process is not procedural at first, but the certificate is still issued and shows the Right to Build certificate.

The State Administration Law regulates land disputes, especially those relating to title certificates. A dispute arises because of the existence of a disputed object or because of a government legal action.

Disputes focused on titles are the most common of many land issues. Based on Article 1 number (5) of Law Number 5 of 1986 jo Law Number 9 of 2004 jo Law Number 51 of 2009 concerning State Administrative Court, state administrative disputes are disputes that arise in the field of State Administration between persons or civil law entities and State Administrative Agencies or Officials, both at the center and in the regions, as a result of the issuance of State Administrative Decisions, including based personnel disputes

CONCLUSION

The issue of ownership of land rights is a complex issue that affects many aspects of people's lives. Analysis of the Basic Agrarian Law (UUPA) and related Government Regulations has identified various problems that arise in the practice of land ownership in Indonesia. It was pointed out that government regulations and UUPA only sometimes fulfilled their original purpose of regulating land ownership fairly and effectively. To create a more inclusive and equitable land tenure system for all levels of society, there are still many administrative, legal, and social barriers that must be overcome. In such a situation, it is important to continue to conduct an in-depth evaluation of existing policies and regulations, as well as to strengthen better law enforcement systems. In addition, active participation from various stakeholders—government, communities, and the private sector—is needed to work together to solve various problems related to land ownership. This journal is expected to be a foundation for further discussion and positive changes in efforts to resolve the problem of ownership of land rights in Indonesia. It is hoped that through solid cooperation and strong commitment, a conducive environment will be created for the development of a land tenure system that favors the interests of the wider community and contributes positively to the development and welfare of the nation.

BIBLIOGRAPHY

- Arrizal, N. Z., Sari, S. D., Evingrum, S., Kharisma, B. U., Perdana, Y. A. W., & Saputri, C. B. (2024). Juridical Review of Uncertified Land Rights Transfer (Land Has Not Been Registered). *KnE Social Sciences*, 191–202.
- Bakker, L. (2023). Custom and violence in Indonesia's protracted land conflict. *Social Sciences and Humanities Open*, 8(1). <https://doi.org/10.1016/j.ssaho.2023.100624>

The Problem of Ownership of Land Rights is Reviewed Based on the Law and Government Regulations

- Dhiaulhaq, A., & McCarthy, J. F. (2020). Indigenous rights and agrarian justice framings in forest land conflicts in Indonesia. *The Asia Pacific Journal of Anthropology*, 21(1), 34–54.
- Fernandes-Tavares, T., Yagüe Blanco, J. L., & Pascual, C. (2024). Dispossessed lands and land-use change in the Colombian armed conflict: Exploring a link through a regional case study. *Journal of Rural Studies*, 108, 103303. <https://doi.org/10.1016/J.JRURSTUD.2024.103303>
- Haghani, M. (2023). What makes an informative and publication-worthy scientometric analysis of literature: A guide for authors, reviewers and editors. *Transportation Research Interdisciplinary Perspectives*, 22. <https://doi.org/10.1016/j.trip.2023.100956>
- Hidayanti, S., Koswara, I., & Gunawan, Y. (2021). The land legal system in Indonesia and land rights according to the basic agrarian law (UUPA). *Legal Brief*, 11(1), 366–378.
- Hjalager, A.-M. (2020). Land-use conflicts in coastal tourism and the quest for governance innovations. *Land Use Policy*, 94, 104566.
- Jimenez-Ayora, P., Mitra, D., Tong, L. A., & Ulubaşoğlu, M. A. (2024). Citizen empowerment through land reform. *Journal of Comparative Economics*. <https://doi.org/10.1016/J.JCE.2024.04.003>
- Koroso, N. H. (2023). Urban land policy and urban land use efficiency: An analysis based on remote sensing and institutional credibility thesis. *Land Use Policy*, 132. <https://doi.org/10.1016/j.landusepol.2023.106827>
- Liu, W., Yin, L., & Zeng, Y. (2024). How new rural elites facilitate community-based homestead system reform in rural China: A perspective of village transformation. *Habitat International*, 149. <https://doi.org/10.1016/j.habitatint.2024.103096>
- Lubis, T. H., & Ramadhani, R. (2021). The Legal Strength of the Deed of Power to Sell as the Basis for Transfer of Land Rights. *International Journal Reglement & Society (IJS)*, 2(3), 149–160.
- Lumbanraja, A. D. (2023). PROSPECTS OF INDONESIAN AGRARIAN LAW SYSTEM REFORM TO PROVIDE THE WELFARES. *Jurnal Hukum Progresif*, 11(2), 133–144.
- Margareta, S., & Huda, M. (2023). The Legal Footing of Petok D as the Evidence of Land Ownership and Rights. *IUS POSITUM (Journal of Law Theory and Law Enforcement)*, 30–46.
- McCarthy, J. F., Dhiaulhaq, A., Afiff, S., & Robinson, K. (2022). Land reform rationalities and their governance effects in Indonesia: Provoking land politics or addressing adverse formalisation? *Geoforum*, 132, 92–102. <https://doi.org/10.1016/j.geoforum.2022.04.008>
- Meckelburg, R., & Wardana, A. (2024a). The political economy of land acquisition for development in the public interest: The case of Indonesia. *Land Use Policy*, 137. <https://doi.org/10.1016/j.landusepol.2023.107017>

- Meckelburg, R., & Wardana, A. (2024b). The political economy of land acquisition for development in the public interest: The case of Indonesia. *Land Use Policy*, 137. <https://doi.org/10.1016/j.landusepol.2023.107017>
- Mursyid, H., Daulay, M. H., Pratama, A. A., Laraswati, D., Novita, N., Malik, A., & Maryudi, A. (2021). Governance issues related to the management and conservation of mangrove ecosystems to support climate change mitigation actions in Indonesia. *Forest Policy and Economics*, 133. <https://doi.org/10.1016/j.forpol.2021.102622>
- NDI, F. A. (2024). Land acquisition, renewable energy development, and livelihood transformation in rural Kenya: The case of the Kipeto wind energy project. *Energy Research and Social Science*, 112. <https://doi.org/10.1016/j.erss.2024.103530>
- Neilson, J. (2022). Intra-cultural consumption of rural landscapes: An emergent politics of redistribution in Indonesia. *Journal of Rural Studies*, 96, 89–100. <https://doi.org/10.1016/j.jrurstud.2022.10.018>
- Pappas, I. O., & Woodside, A. G. (2021). Fuzzy-set Qualitative Comparative Analysis (fsQCA): Guidelines for research practice in Information Systems and marketing. *International Journal of Information Management*, 58, 102310.
- Permadi, I. (2023). Electronic Title Certificate as Legal Evidence: The Land Registration System and the Quest for Legal Certainty in Indonesia. *Digital Evidence & Elec. Signature L. Rev.*, 20, 47.
- Pratikno, A. S. (2020). *Penyajian Data, Variasi Data, dan Jenis Data*.
- Roestamy, M., Martin, A. Y., Rusli, R. K., & Fulazzaky, M. A. (2022). A review of the reliability of land bank institution in Indonesia for effective land management of public interest. *Land Use Policy*, 120. <https://doi.org/10.1016/j.landusepol.2022.106275>
- Sahide, M. A. K., Fisher, M., Nasri, N., Dharmiasih, W., Verheijen, B., & Maryudi, A. (2020). Anticipating a new conservation bureaucracy? Land and power in Indonesia's Essential Ecosystem Area policy. *Land Use Policy*, 97, 104789.
- Sari, I. (2020). Hak-hak atas tanah dalam sistem hukum pertanahan di Indonesia menurut Undang-Undang Pokok Agraria (UUPA). *Jurnal Mitra Manajemen*, 9(1).
- Sari, N. L. A. (2021). Konsep hak menguasai negara terhadap tanah dalam hukum tanah (uupa) dan konstitusi. *Ganec Swara*, 15(1), 991–998.
- Sholahudin, U., Siahaan, H., & Wiratraman, H. P. (2020). A Relational Analysis of State Law and Folk Law in the Bongkoran Agrarian Conflicts, Banyuwangi Regency, East Java, Indonesia. *Society*, 8(2), 419–436.
- Suartining, N. K., & Djaja, B. (2023). Land Rights in the Land Law System in Indonesia According to the Basic Agrarian Law Number 5 of 1960. *Journal of Social Research*, 2(6), 1775–1785.
- Thamrin, R. M. H., Harahap, E. P., Khoirunisa, A., Faturahman, A., & Zelina, K. (2021). Blockchain-based land certificate management in indonesia. *ADI Journal on Recent Innovation*, 2(2), 232–252.
- White, B., Graham, C., & Savitri, L. (2023). Agrarian movements and rural populism in Indonesia. *Journal of Agrarian Change*, 23(1), 68–84.

The Problem of Ownership of Land Rights is Reviewed Based on the Law and Government Regulations

- Yubaidi, R. S. (2020a). The future of land ownership regulation in Indonesia. *International Journal of Multicultural and Multireligious Understanding*, 6(6), 712–720.
- Yubaidi, R. S. (2020b). The role of land deed official regarding legal certainty of complete systematic land registration. *Jurnal Hukum Dan Peradilan*, 9(1), 27–42.
- Zhang, S., Hu, W., Li, M., Guo, Z., Wang, L., & Wu, L. (2021). Multiscale research on spatial supply-demand mismatches and synergic strategies of multifunctional cultivated land. *Journal of Environmental Management*, 299, 113605.

Copyright holder:

Cecep Miptahuddin (2024)

First publication right:

Advances in Social Humanities Research

This article is licensed under:

