



## THE LEGAL STATUS OF UNCERTIFIED LAND IN INDONESIA: CHALLENGES AND PATHWAYS TO OWNERSHIP CERTIFICATION UNDER AGRARIAN LAW

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### ABSTRACT

Every individual has the right to private property, and these rights cannot be taken arbitrarily. Before the enactment of the Basic Agrarian Law (UUPA) in Indonesia, a dualism in agrarian regulations existed, leading to various forms of land tenure. One such form is "girik," a document associated with generational land ownership, often without an official land certificate. Girik land is typically inherited and lacks formal certification, creating potential legal complications. This research employs normative juridical methods, focusing on secondary data to examine the legal status of girik as land ownership evidence under Indonesian agrarian law. The study addresses two key questions: (1) What is the legal standing of girik as proof of land ownership under Indonesian agrarian law? and (2) How can the status of girik land be converted into a formal certificate of ownership? Findings reveal that the UUPA does not recognize girik as valid proof of ownership, as confirmed by Supreme Court Decision No. 34/K/Sip/1960. The research underscores the importance of formalizing girik land to prevent future legal disputes.

### A. INTRODUCTION

Based on Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia, it is stated that "Indonesia is a State of Law". This means that as a state of law, everything must be guided by applicable regulations, including land. In Indonesia, land is regulated in Law Number 5 of 1960 concerning Basic Agrarian Regulations. The Basic Agrarian Law or commonly abbreviated as UUPA (*Undang-Undang Pembaharuan Agraria*, herewith mentioned as UUPA) is a law that regulates rights to land, water and air. This is one of the implementations of Article 33 paragraph 3 which states that the earth and water and the natural resources contained therein are controlled by

the State and used for the greatest prosperity of the people. So that the existence or birth of UUPA is an explanation of land regulations in Indonesia.

Looking at a brief history before the UUPA was born, regarding agrarian regulations in Indonesia, there is still a dualism in the applicable regulations.<sup>1</sup> The dualism that prevailed at that time was very detrimental to the indigenous people, because land with customary rights regulated based on customary law was an unwritten law, while on the other hand, land with western rights was regulated by written western law. However, after the UUPA comes into effect, it is no longer possible to issue rights that are subject to western law or local customary law unless it is stated that these rights are customary rights. This legal unification sought to address the imbalance and ensure fairer treatment of indigenous land claims. Additionally, the recognition of customary rights is crucial for upholding the legal status and existence of indigenous land under modern law, highlighting the ongoing need for policies that protect the land rights of indigenous communities. These challenges are also reflected in broader governance issues where collaboration between local authorities and indigenous groups can be biased or insufficient, further emphasizing the importance of legal frameworks that secure the rights of indigenous populations.<sup>2</sup>

As we know that in the field of land, the term "girik" is often heard. Girik is a letter for a land including related to hereditary or customary land ownership. Not only that, girik can be interpreted as initial evidence related to ownership of a plot of land, where the lands referred to in this case are lands subject to customary law. Girik land is generally inherited or from his family. Thus it can be said that generally girik land does not have an official certificate. Of course, the unofficial nature of the certificate will create the potential for problems in the future. As is known, the current UUPA does not recognize proof of ownership other than a land certificate, so that the status of girik cannot be equated with a certificate. Based on this, it is necessary to know how the existence of girik as proof of ownership in agrarian law in Indonesia. Based on the background description, the author formulates problems such as how is the existence of girik as proof of land ownership based on agrarian law in Indonesia? and how is the status of girik land changed to certified land in Indonesia?

<sup>1</sup> Desy Tejawati, "Asas Kepastian Hukum Dalam Kedudukan Girik Terhadap Sertipikat Hak Atas Tanah," *Jurnal Suara Hukum* 3, no. 2 (2021): 252.

<sup>2</sup> Anyualatha Haridison, "Why did the common objective be biased in the execution collaborative governance program? The case from Dayak Indonesia," *Land Use Policy* 140 (2024): 107050. See, Gamal Abdul Nasir, Khudzaifah Dimiyati, and Absori Absori, "Jaminan Hukum atas Pengakuan dan Eksistensi Hak Ulayat pada Masyarakat Hukum Adat," *Lex Publica* 6, no. 1 (2019): 35.

## **B. RESEARCH METHODS**

The type of research used is normative juridical. This research is a legal research conducted by examining library materials referred to as secondary data. This research is intended to determine the existence of a girik certificate as a means of ownership of a land. The data for this research comes from secondary data where this secondary data consists of primary, secondary and tertiary legal materials. Primary legal materials are the main materials that will be used as guidelines in answering the formulation of the problem in this research. The primary legal materials are supported by secondary legal materials which are supporting legal materials or provide explanations for the primary legal materials.<sup>3</sup> Secondary legal materials in this case are journals, articles, research results and others that are relevant to the topic discussed. Primary and secondary legal materials will be clarified with tertiary legal materials such as magazines, data from the internet and others.

## **C. RESULT AND DISCUSSION**

### **The Existence of Girik as Proof of Land Ownership Based on Agrarian Law in Indonesia**

As stated in Article 34 paragraph (1) of the 1945 Constitution which essentially states that every individual has the right to own private property rights, where such property rights cannot be taken arbitrarily by anyone. This also applies to land ownership, which is the right of every individual without exception. In owning land, the state guarantees that every citizen has private property rights, including in this case owning land.<sup>4</sup> Article 2 of the Basic Agrarian Law confirms that the earth, water and space, including the natural resources contained therein, are controlled at the highest level by the State.

As a consequence of the state's recognition of land ownership rights owned by individuals or legal entities, the state is obliged to provide guarantees related to legal certainty regarding land rights. So that every person or legal entity that has these rights can defend their rights. One effort to provide legal certainty to individuals or legal entities that have rights to a land or plot, then the individual or legal entity concerned must register their land where after the land is registered, a Certificate of Ownership of the land will be issued.<sup>5</sup> Certificates can be used as evidence of ownership of land or plots. As stated in Article 1 number 20 of Government Regulation Number 24 of 1997, it is determined that a certificate is a proof of rights in accordance

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<sup>3</sup> Kornelius Benuf and Muhamad Azhar "Metodologi penelitian hukum sebagai instrumen mengurai permasalahan hukum kontemporer," *Gema Keadilan* 7, no. 1 (2020): 26.

<sup>4</sup> Abdul Jabar, "Kekuatan Hukum Surat Girik Terhadap Penguasaan Hak Atas Tanah Dalam Hukum Agraria Nasional," *AL-Ahwal* 10, no. 1 (2019): 131.

<sup>5</sup> Jabar, "Kekuatan Hukum Surat Girik," 135.

with that stipulated in Article 19 paragraph (2) letter c UUPA that for rights to land, management rights, waqf land, ownership rights to apartment units and mortgage rights which have each been recorded in the land book of the person concerned, then the certificate is a letter that serves as proof of the matter which is valid as a strong evidence.<sup>6</sup>

In everyday life, there are many evidences of ownership other than certificates, namely girik. Girik Letter is a term for tax payment letter in rural areas. Before the enactment of the Basic Agrarian Law (UUPA), records were made to determine the plots of land or yards and trees that had been given to certain people, accompanied by the recording of the names and owners of each.<sup>7</sup> Before the enactment of UUPA, girik was still recognized as proof of land rights, but after the enactment of UUPA and PP No. 24 of 1997 concerning Registration, only land rights certificates were recognized as proof of ownership of land.<sup>8</sup> Ownership of a land by having a girik is often caused by a decline from generation to generation or inheritance, although some people get it from the buying and selling process. Girik can be used to pay Land and Building Tax (PBB) but has not yet obtained perfect legal force. So in the UUPA does not recognize girik as proof of ownership of a land.<sup>9</sup> However, until now the understanding of girik as proof of ownership of land rights continues to develop and exist. So that many people feel that they are safe, because they already have girik as proof of ownership of their land rights.

The continued use of girik to pay Land and Building Tax (PBB) indicates that it retains some functional value, although it does not provide legal certainty under the modern legal framework. The UUPA does not recognize girik as valid proof of land rights. Despite this, many people still feel secure in their land ownership because they possess girik as evidence. This reliance on girik highlights a tension between formal legal systems and customary practices, where traditional customs continue to influence land ownership perceptions. The persistence of girik as a form of land ownership claim underscores the need for policies that integrate both customary and modern legal frameworks to ensure protection of landowners' rights and enhance legal certainty.<sup>10</sup>

<sup>6</sup> Adrian Sutedi, *Sertifikat Hak Atas Tanah*. (Jakarta: Sinar Grafika, 2012), 86.

<sup>7</sup> H. Masnadi, Ahmad Muliadi, and Irawan Santosa, "Kepastian Hukum Terhadap Surat Girik Sebagai Dasar Bukti Pendaftaran Hak Atas Tanah," *Jurnal Nuansa Kenotariatan* 5, no. 1 (2021): 31.

<sup>8</sup> Tejawati, "Asas Kepastian Hukum," 60.

<sup>9</sup> Johannes Mangapul Turnip, and Alex Rudianto Simanjuntak, "Keabsahan Surat Tanah Tahun 1923 (Tanah Girik) Dalam Hal Penguasaan Tanah Sebelum Lahirnya UUPA," *Jurnal Darma Agung* 30, no. 2 (2022): 401

<sup>10</sup> Firman Muntaqo, Febrian Febrian, and Alip Dian Pratama, "Adat Law as a Foundation for Advancing Indonesian Agrarian Law to Maximise Societal Welfare," *Sriwijaya Law Review* 8, no. 2 (2024): 376. See, Hariyanto Hariyanto, Mabarroh Azizah, and Nurhidayatuloh Nurhidayatuloh,

Although girik does not have legal force in proving the right to ownership of a land in court, girik is initial evidence as evidence that must be supported by other evidence, namely land control for more than 20 years and the existence of Petok D, Girik, Pipil, Ketitir, Verponding Indonesia or whatever it is called, a deed of transfer of rights under hand marked with a witness by the local Head of Customary/Village/Sub-district, a deed of transfer of rights made by a PPAT whose land has not been recorded accompanied by the basis of the transferred rights, a deed of waqf pledge / waqf pledge letter accompanied by the basis of the waqf rights, auction minutes, a letter of appointment to purchase a plot of land to replace land taken by the government, a certificate of land history that was previously made by the head of the PBB office accompanied by the basis of the transferred rights.<sup>11</sup>

### **Transfer and Registration of Girik Land Status to Certified Land**

In the context of initial land registration/the process of issuing certificates of ownership of land originating from customary lands such as girik letters, whether carried out systematically or sporadically, the implementation procedure is carried out by means of Recognition of Rights/Confirmation of Rights, as regulated in the Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration. Furthermore, Article 9 paragraph (2) number 2 letter (a) of PMNA/Head of BPN No. 9 of 1999 clearly states that one of the requirements for processing an application for ownership of land is to include a legal basis as basic evidence of control, either in the form of a certificate, girik, plot letter, letters of evidence of release of rights and settlement of land and houses and/or those that have been purchased from the government, court decisions, PPAT deeds, deeds of release of rights, and other letters of evidence of land acquisition.<sup>12</sup> In the issuance of certificates, a process is required involving the

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"Does the Government's Regulations in Land Ownership Empower the Protection of Human Rights?," *Journal of Human Rights, Culture and Legal System* 4, no. 2 (2024): 400.

<sup>11</sup> M. Yazid Fathoni, Adi Sulistiyono, and Lego Karjoko, "Reformulation of Sale And Purchase Agreement Regulations in Creating Legal Certainty and Justice in The Transfer of Land Rights in Indonesia," *Jurnal IUS Kajian Hukum dan Keadilan* 12, no. 1 (2024): 61. See, Moh Indra Bangsawan, Absori Absori, Arief Budiono, Kelik Wardiono, Bambang Sukoco, and Dewi Kusuma Diarti, "Abandoned Land Utilization for Food Security: A Welfare-Based Policy Approach in Indonesia," *International Journal of Sustainable Development & Planning* 19, no. 3 (2024). See, Chairul Fahmi, "The application of international cultural rights in protecting Indigenous peoples' land property in Indonesia," *AlterNative: An International Journal of Indigenous Peoples* 20, no. 1 (2024): 156.

<sup>12</sup> Masnadi, Muliadi, and Santosa, "Kepastian Hukum Terhadap," *Jurnal Nuansa Kenotariatan* 5, no. 1 (2021): 33.

applicant, land owner and also related institutions as the basis for rights related to the land certificate application. The applicant's explanation from the related party has the potential or opportunity for forgery, expiration or even fictitious so that it will cause a legal defect in the certificate in question.<sup>13</sup>

Since the birth of UUPA, the government has encouraged the community to change or in this case convert land with old rights or can be said to be land without a certificate into land rights that have an official certificate, one of which is girik land. In land registration, several elements of land registration must be considered, namely:<sup>14</sup>

1. A series of activities with the aim of collecting both physical and legal data from the land.
2. There is a special agency that has the authority and competence, namely the Ministry of Agrarian Affairs and Spatial Planning.
3. Regularly and continuously, the land registration process is an activity that is based on statutory regulations and this activity is carried out continuously without stopping until someone obtains proof of rights.
4. Land data is both physical data and legal data. Physical data contains data about the land, including location, boundaries, building area, and plants on it. While legal data contains data about its rights, including what rights, and who the rights holders are.
5. The village area is a unitary area with the object of land registration.
6. Certain lands, related to the objects of land registration.
7. There is proof of ownership in the form of a certificate.

The procedure for changing girik land into official land that has a certificate consists of 2 stages. The first stage in changing the status of girik land into officially certified land is a matter at the village office. At this stage, the landowner must prepare several files such as a Certificate of No Dispute. This letter contains information that states that the applicant is the legal owner of the land and that other parties cannot claim or claim ownership.<sup>15</sup> Then if it

<sup>13</sup> Ali Achmmad Chomzah, *Hukum Pertanahan Seri Hukum Pertanahan III-Penyelesaian Sengketa Hak Atas Tanah dan Seri Hukum Pertanahan IV-Pengadaan Tanah Instansi Pemerintah*. (Jakarta: Prestasi Pustaka, 2003), 18.

<sup>14</sup> Suhadi dan Rofi Wahanisa, *Buku Ajar Pendaftaran Tanah*. (Semarang: UNS, 2008), 12.

<sup>15</sup> Lina Jamilah, and Arif Firmansyah, "Preliminary Concept of Alternative Agrarian Reform for Justice: The Social Tenure Domain Model (STDM) Approach to Constructing a Just Society in Indonesia," *Jurnal Hukum* 39, no. 2: 181. See, Kartika Winkar Setya, Abdul Aziz Nasihuddin, and Izawati Wook, "Fulfilling Communal Rights through the Implementation of the Second Principle of Pancasila towards the Regulation on Agrarian Reform," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* (2023): 99. See, Winahyu Erwiningsih, "Legal Arrangements and Implementation of State Ownership Rights Over Land in Indonesian Constitution," *Academic Journal of Interdisciplinary Studies* 12 (2023).

has been proven that the land does not have or is in dispute, then the Village Head/Lurah will sign it. However, if it is found that the land is in dispute, the parties involved are required to resolve the dispute that is being faced until a consensus is reached, only then can the Village Head/Lurah sign it.<sup>16</sup> Furthermore, the applicant is required to prepare a Land History Certificate which contains the identity of the land owned starting from the identity of the initial owner to the heir. Furthermore, the applicant is required to prepare a Sporadic Land Ownership Certificate which contains a reaffirmation that the applicant is legally entitled to the girik land that was previously applied for. So that the letter will state the date the land was obtained and how to obtain it.<sup>17</sup>

The next stage is the administration at the Land Office. At this stage, the Applicant submits a file application where the application must be accompanied by the original girik or a photocopy of letter C, the three original letters that have been processed at the Village Office, a photocopy of the applicant's KTP and KK, a photocopy of the Tax Notification Letter for Land and Building Tax, Power of Attorney (if the certificate administration is authorized), a statement letter that has installed boundary markers and other documents as required by law. After the Applicant submits the application, the next step is the measurement of the girik land which will be carried out by the authorized party, namely the measuring officer by bringing a letter of assignment issued by the Head of the Land Office. This measurement is carried out according to the boundaries submitted by the applicant, with the aim that the area of land requested is the same as the facts in the field.

The process of transitioning girik land into formally recognized ownership involves several administrative steps. Once girik land is measured, the National Land Agency issues a measurement and research letter, which details the results of the land measurement and is signed by an authorized official. The formalization of land ownership in Indonesia is crucial for stabilizing land rights, preventing issues such as abandoned land, and ensuring legal security in land registration. Accurate measurement and official validation are essential to the certification process, supporting the broader framework of land management and legal ownership. Comparative insights from other land registration systems highlight the importance of efficient and transparent procedures in accelerating land registration efforts in Indonesia.<sup>18</sup> After that,

<sup>16</sup> Charren Hendrik, "Punya Tanah Girik? Ini Cara Mengubahnya Menjadi Resmi," *Perqara*, February 22, 2023, <https://perqara.com/blog/cara-mengubah-tanah-girik-menjadi-resmi/>. Accessed on March 5, 2023.

<sup>17</sup> Hendrik, "Punya Tanah Girik?," *Perqara*, February 22, 2023, <https://perqara.com/blog/cara-mengubah-tanah-girik-menjadi-resmi/>. Accessed on March 5, 2023.

<sup>18</sup> Rahayu Subekti, Adi Sulistiyono, Diah Pawestri Maharani, and I. Gusti Ayu Gangga Santi Dewi, "The urgency of the legal strategy of abandoned-land use through the formation of land bank in Indonesia," *Cogent Social Sciences* 9, no. 1 (2023): 2239050. See, Dhaniswara K. Harjono,

further research will be continued to examine, review physical and legal data in the field with data that has been requested at the land office. After that, a legal data announcement will be carried out which aims to ensure that no party objects to the application for land rights. However, if there are objections, the application for land rights will be postponed until the dispute is resolved. The procedure of examining and reviewing both physical and legal data in the field, followed by a legal data announcement, plays a critical role in ensuring that no party objects to the application for land rights. If objections arise, the process is paused until disputes are resolved, ensuring transparency and fairness in the land registration system. This approach aligns with ongoing efforts to modernize and digitize land services in Indonesia, which aim to streamline these processes and improve efficiency. The shift towards digital transformation in land services emphasizes the need for comprehensive legal data validation, ensuring that land applications are accurate and dispute-free. Furthermore, the practice of safeguarding land ownership and resolving disputes is a key element in ensuring fairness in land distribution. Legal challenges, such as those involving foreign nationals or ownership disputes, further illustrate the importance of reviewing both physical and legal data to maintain the integrity of land ownership procedures in Indonesia.<sup>19</sup>

Then it will be continued with the issuance of a Decree on the land which will be issued by the Head of the Land Office. So that with the existence of the decree, in this case the rights to the girik land submitted by the applicant can be changed into a certificate. The next stage is the payment of Land and Building Acquisition Fees (BPHTB). This payment must be made before the certificate is issued in the Sub-Section for Registration of Rights and Information. As the last stage in the process of changing girik land into officially certified land, namely the registration and issuance of the Certificate. Where at this stage the SK Hak process will be registered to continue the process of issuing SHM. After being signed by an authorized official, the land ownership status of the girik has officially changed to a certificate.

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"Legal Development of the Validity of Electronic Mortgage Certificates in the Land Registration System in Indonesia," *Yustisia Jurnal Hukum* 11, no. 2 (2022): 110. See, Ricco Survival Yubaidi, Mazliza Mohamad, and Saidatul Nadia Abd Aziz, "Land registration acceleration in Indonesia: A lesson-learned guideline from land registration issues in Malaysia," *UUM Journal of Legal Studies* 13, no. 1 (2022): 155.

<sup>19</sup> Kusmiarto Kusmiarto, Trias Aditya, Djurdjani Djurdjani, and Subaryono Subaryono, "Digital transformation of land services in Indonesia: A Readiness Assessment," *Land* 10, no. 2 (2021): 120. See, Reni Anggriani, and Ayura Monica Zandra, "Nominee Contract Practice on Ownership of Foreign National Land in Indonesia," *Jurnal Hukum Novelty* (1412-6834) 12, no. 1 (2021). See, Koko Komaruddin, "Fairness in the distribution of land ownership in Indonesia based on Islamic law perspective," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 20, no. 2 (2020): 211.



The final stages in converting girik land into officially certified land involve several critical steps. Once the Head of the Land Office issues a Decree (SK Hak), the rights to the girik land can be formally recognized and converted into a certificate. Following this, the applicant must pay the Land and Building Acquisition Fees (BPHTB) before the certificate is issued. The final stage entails the registration and issuance of the land certificate, where the SK Hak is registered, and the land's ownership status is officially certified once signed by an authorized official. This process is essential for ensuring that land ownership is properly documented and legally recognized. These steps are crucial for maintaining sustainable land management and preventing land disputes, especially given the complexity of land rights in Indonesia. The formal certification process is not only a matter of legal compliance but also ensures the protection of landowners' rights and contributes to the broader framework of agrarian justice. Sustainable land management and the formalization of ownership rights are also key to addressing broader issues like agricultural land conversion, indigenous land rights, and foreign ownership, which have been central themes in the ongoing discourse on land reform and justice in Indonesia.<sup>20</sup>

#### D. CONCLUSION

In the context of agrarian law, girik acts as initial evidence that requires additional data support to be strengthened. The Basic Agrarian Law (UUPA) does not recognize girik as proof of ownership of a land or plot. Valid evidence recognized by UUPA is a land certificate. Although girik cannot be used as proof of land rights, this document still has an important role as proof of land ownership before the land is registered. In the process of submitting a land registration application, girik can be included as one of the supporting legal data. According to UUPA, a certificate is valid evidence and has strong legal force. This means that the holder of a land certificate has stronger legal protection in the event of a dispute or lawsuit over the land. Even if another

<sup>20</sup> Musleh Harry, and Nur Janani, "Problematika Pengendalian Konversi Tanah Pertanian Untuk Mewujudkan Keadilan Lahan Pangan Berkelanjutan di Kota Malang/The Problems of Controlling Agricultural Soil Conversion to Achieve Sustainable Food Land Justice in Malang City," *De Jure: Jurnal Hukum dan Syari'ah* 12, no. 2 (2020): 227. See, Miftahul Jannah, Azila Ahmad Sarkawi, and Jamilah Othman, "Legalization of Waqf forests in Indonesia: The registration process," *Indon. L. Rev.* 10 (2020): 278. See, I. Made Ariwangsa Wiryanatha, M. Arba, and Widodo Dwi Putro, "Akibat Hukum Putusan Hakim yang Melanggar Hukum dalam Pemilikan Tanah Oleh Orang Asing (Studi Putusan No. 328/Pdt. G/2013/PN. Dps.)," *Jurnal IUS Kajian Hukum dan Keadilan* 7, no. 3 (2019): 410. See, Ahmad Dhiaulhaq, and John F. McCarthy, "Indigenous rights and agrarian justice framings in forest land conflicts in Indonesia," *The Asia Pacific Journal of Anthropology* 21, no. 1 (2020): 50.

party files a lawsuit over the same land rights, the legal force of the certificate remains recognized until there is a court decision that has permanent legal force. In other words, as long as there is no court decision that validates another party's lawsuit, the land certificate remains valid and strong evidence of ownership in the eyes of the law. Although girik has a certain function in land ownership, it cannot be used as proof of legal ownership without the support of other stronger data. Land certificates, which are recognized by the UUPA, remain the only legal proof of ownership and have the highest legal force in agrarian disputes in Indonesia.

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