

THE LEGAL CERTAINTY OF LAND OWNERSHIP RIGHT IN REGISTRATION'S CONTEXT

Christiana Sri Murni
Universitas Flores, East Nusa Tenggara, Indonesia
srilmurni.uniflor61@gmail.com

Bernadus Basa Kelen
Universitas Flores, East Nusa Tenggara, Indonesia
kelenbernadus@gmail.com

Sumirahayu Sulaiman
Universitas Flores, East Nusa Tenggara, Indonesia
ayusulaiman123@gmail.com

Abstract

The aims of this research is to know that certificate as a letter of evidence that is valid as strong evidence regarding the physical data and juridical data contained in it, as long as the physical data and juridical data are in accordance with the data contained in the letter of measurement and the book of land rights in question. But in reality, the certificate can still be sued by the subject of the right who feels he has the right to the land. This research used a normative legal research with qualitative descriptive data analysis. Based on the results of the study indicate that land registration activities include the collection and processing of physical data, proof of rights, bookkeeping, and issuance of certificates. With the issuance of a certificate of land rights, the owner has legal certainty and legal protection. However, in reality, land rights certificates can be sued in court. This shows the existence of legal uncertainty, because at any time the rights subject who feels he has a right or feels that his rights have been violated by another party can file a lawsuit against another party whose name has been registered in a certificate.

Keyword: *Certainty; Certificate; Land; Registration.*

A. INTRODUCTION

Land is a valuable asset and plays an important role in human life, because in everyday life humans are very dependent on land to meet their needs, especially for housing.¹ The problem of land ownership is closely related to legal certainty regarding land rights for the community. Therefore, it is clear that the systematic recording of land and land rights is very important both for state administration and for the planning and development of land use itself, as well as for legal certainty in the transfer

¹ Christiana Sri Murni., Peran Pejabat Pembuat Akta Tanah Dalam Proses Peralihan Jual Beli Hak Atas Tanah, *Jurnal Kajian Pembaruan Hukum*, Vol.1 No.1, 2021, page.25-48.

of rights, transfer or assignment of land rights.² The Basic Agrarian Law (commonly abbreviated as UUPA) which is the basic land law regulates Indonesia's main agrarian issues in outline. Furthermore, its implementation is further regulated through laws, government regulations and other laws and regulations.³ The purpose of the birth of the UUPA is to lay the foundations for the preparation of national agrarian law which is a tool to bring prosperity, happiness and justice to the state and people, especially the peasants, in the framework of a just and prosperous society. Laying the foundations for establishing legal unity and simplicity in land law. Laying the foundations to provide legal certainty regarding land rights for the whole people.⁴

To declare an ownership of immovable (fixed) objects, in this case land, it is necessary to have a valid legal basis. Therefore, the land needs to be registered, because land registration will provide a guarantee of legal certainty known as *rechts cadaster* / legal cadaster.⁵ Article 19 Paragraph (1) of the UUPA states that in order to guarantee legal certainty by the government on land, land registration is carried out throughout the territory of the Republic of Indonesia according to the provisions regulated by government regulations. Thus, UUPA was born. The purpose of land registration is to provide legal certainty regarding the subject of rights, namely certainty regarding the right holder (land owner) and the object, namely certainty regarding the land, such as location, shape, area, boundaries and others. UUPA has a very strategic and decisive position, not only as an implementation of the provisions of Article 19 of the UUPA, but more than that, it becomes the backbone that supports the running of land administration as one of the Land Order and Land Law programs⁶. Indonesia. The proper implementation of land registration is the basis for the realization of orderly administration in the land sector. In order to realize orderly land administration, every parcel of land including the transfer, encumbrance and abolition of rights to land parcels and property rights to land must be registered.

Article 19 Paragraph (2) letter c of the UUPA stipulates that one of the registration activities is to present a valid certificate of evidence as a strong evidence. Meanwhile, Article 23 (1) of the UUPA Property rights, as well as removing them and encumbering them with other rights, must comply with the provisions referred to in Article 19. Article 23 Paragraph (2) registration as referred to in Paragraph (1) is a strong means of proof

2 Christiana Sri Murni, Pendaftaran Peralihan Hak Milik Atas Tanah Karena Pewarisan, *Lex Librum: Jurnal Ilmu Hukum*, Vol. 6 No.2, 2020, page.129-144.

3 Verlia Kristiani, Hukum Yang Berkeadilan Bagi Hak Ulayat Masyarakat Hukum Adat (Kajian Dan Implementasi), *ADIL: Jurnal Hukum*, Vol.11 No.1, 2020, page. 143–163.

4 Fradhana Putra Disantara, Konsep Pluralisme Hukum Khas Indonesia Sebagai Strategi Menghadapi Era Modernisasi Hukum, *Al-Adalah: Jurnal Hukum Dan Politik Islam*, Volume 6, Number 1, 2021, page.1-36.

5 Adrian Sutedi, *Peralihan Hak Atas Tanah Dan Pendaftarannya*, Sinar Grafika, Jakarta, 2014. page.62.

6 Ong Argo Victoria, Ade Riusma Ariyana, Devina Arifani, *Code of Ethics and Position of Notary in Indonesia*, Sultan Agung Notary Law Review Vol.2 No.4, page.397-407, 2020

regarding the abolition of rights property and legality of these songs and songs. In accordance with Article 32 (1) of Government Regulation Number 24 of 1997 states that "Certificates are letters of evidence 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". From the description of Article 19 Paragraph (2), Article 23, Article 32 Paragraph (1) the right holder who has registered his land obtains legal certainty guarantees, because the certificate is the final result of registering land as a strong evidence. However, the results of the registration of land rights whose certificates have been issued and owned by a person or group of people or legal entities can still be sued or sued against something that has been recorded in the certificate by another party who feels more entitled.

The problem with the lawsuit against land rights certificates relates to the provision that land rights certificates cannot be contested after 5 (five) years of issuance because they are considered to be relinquishing rights (*rechtverwerking*).⁷

The guarantee of legal certainty is provided by the UUPA with land registration, in the form of a certificate of proof of rights that applies as a strong evidence. However, the proof of rights in the form of this certificate does not have absolute evidentiary power. This means that the certificate can still be defeated by a lawsuit filed by another party who feels they own the land, even after the defendant's certificate has been issued.⁸ In fact, research on legal certainty on land registration has been carried out several times before. *First*, research by Apriani and Arifin (2021) on legal certainty and legal protection in the land registration publication system in Indonesia; as the research states that basically the negative publication system adopted by Indonesia does not guarantee a publication system that does not guarantee legal certainty. *Second*, research by Marulak Pardede (2019) on State Controlling Rights in Legal Assurance of Land Rights Ownership and Designation; as the research concludes that various land problems arise, among others stemming from the existence of confusion in the regulation and the weakness in implementing various provisions in practice, giving rise to legal uncertainty. *Third*, research by Lie (2015) on legal certainty in granting property rights to land through land redistribution programs; as the results of the study revealed that the land redistribution program has ensured legal certainty by considering the acquisition of land certificates that are evenly distributed to the community.

The three studies above are different from this study. Therefore, this research focuses on examining the dynamics of land registration

7 Ayu Larasati and Raffles Raffles, *Peralihan Hak Atas Tanah Dengan Perjanjian Jual Beli Menurut Hukum Pertanahan Indonesia*, *Zaaken: Journal of Civil and Business Law*, Vol.1 No.1, 2020, page.27–144.

8 Abdul Mukmin and Andri Pranata, *Peran Kantor Pertanahan Kota Samarinda Dalam Penyelesaian Sengketa Dan Konflik Pertanahan*, *Yuriska: Jurnal Ilmiah Hukum*, Vol.12 No.2 2020, page.148–159.

mechanisms which are very vulnerable to creating legal uncertainty. On the other hand, this research is oriented to examine the legal certainty aspects of the dynamics and mechanisms of land registration. Legal uncertainty arises because the legal instruments that are operationally in the land sector are not able to support their implementation due to both vertical and horizontal dis-synchronization in the laws and regulations. Thus, there are two legal issues discussed in this study. *First*, how is the mechanism for registering land rights in line with applicable regulations? *Second*, how is the legal certainty regarding the registration of land rights? The aim of the article to be describe and understand why and how there may be a difference between the legality and legitimacy of the public land register / *cadastre* and the legality and legitimacy of the land certificates (or at least for those who use the land certificates for transactions or for gaining or securing land access). Hence, the degree of certainty of land rights – either through its registration or by the issuance of title certificates is being evaluated in this article.

B. RESEARCH METHODS

This research was normative legal research. The approach used in this research was the statutory approach and the conceptual approach. The legislation approach was an approach using regulations, Act No.5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA), Government Regulation Number 24 of 1997 concerning land registration, Presidential Decree Number 26 of 1998 concerning the National Land Agency, the implementation of land registration is carried out by the National Land Agency. While the conceptual approach was carried out where the researcher does not move from the existing rules. After the legal materials were inventoried, they will be analyzed in a qualitative descriptive manner, namely describing one legal material with another in a systematic, logical, orderly manner, in order to answer problems related to the legal certainty of land rights registration.⁹

C. RESULTS AND DISCUSSION

1. The Elements of Land Ownership Right

Article 1 point 1 Government Regulation Number 24 of 1997 concerning 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 land registration in Government Regulation Number 24 of 1997 concerning Land Registration is a refinement of the scope of land registration activities based on Article 19

9 Peter Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi*, 13th ed., KENCANA, Jakarta, 2017, page.52

Paragraph (2) of Government Regulation Number 10 of 1961 which only covers land measurement, mapping and bookkeeping, registration and transfer of rights. There are some elements of land registration.¹⁰

First, "there are activities" regarding the existence of various activities in the implementation of land registration, which are related to others, sequentially into a single series which leads to the availability of the necessary data in order to provide legal guarantees in the land sector for the people. Land registration activities consist of land registration activities for the first time, the forms of activities are collection and processing of physical data, proof of rights and bookkeeping, issuance of certificates and presentation of physical data and juridical data, storage of general registers and documents, and maintenance of land registration data, forms Its activities are registration of transfers and assignment of rights and registration of changes to other land registration data. *Second*, "carried out by the government" is that land administration in modern society is a state task carried out by the government for the benefit of the people in order to guarantee legal certainty in the land sector. The government agency that carries out land registration is the National Land Agency (BPN), while in its implementation it is carried out by the Head of the Regency/City Land Office. *Third*, element "continuously" refers to the implementation of activities, which once started will never end. The data that has been collected and available must always be maintained, in the sense that it is adjusted to changes that occur later until it remains in accordance with the latest state. Land registration activities for the first time produce proof of rights in the form of certificates.¹¹

In land registration activities, there can be transfer of rights, encumbrance of rights, extension of the term of land rights, resolution. Separation and merging of parcels of land, division of joint rights, elimination of land rights and ownership rights to flat units, transfer and elimination of mortgage rights, changes to land registration data based on court decisions and changes to names of right holders must be registered with the local Regency/Municipal Land Office. *Fourth*, element "on a regular basis" indicates that all activities must be based on appropriate statutory regulations, because the results will be evidence according to law, even though the power of proof is not always the same in the law of the country that organizes land registration. *Fifth*, element "plots of land and apartment units" land registration activities are carried out on property rights, business use rights, building use rights, use rights, management rights, *waqf* land, property rights over flat units, mortgage rights and state land. *Sixth*, "giving proof of rights" for land registration activities for the first time producing certificates of proof of rights in the form of certificates for land parcels that already have rights

10 Aliya Sandra Dewi, Mekanisme Pendaftaran Tanah Dan Kekuatan Pembuktian Sertifikat Kepemilikan Tanah, *Jurnal Dinamika Masalah Hukum Dan Keadilan*, Vol.9 No.1, 2018, page. 19-36.

11 Harris Yonatan Parmahan Sibuea, Arti Penting Pendaftaran Tanah Untuk Pertama Kali, *Jurnal Negara Hukum*, Vol. 2 No.2, 2011, page. 299.

and certificates of ownership of flat units. Land registration for the first time is carried out in two ways, firstly systematically covering the village or sub-district area or part of it, which is mainly carried out at the initiative of the government and secondly, sporadically, namely registration of land parcels at the request of the right holder or recipient of the rights concerned individually or in bulk.

Data collection and processing, in the context of collecting and processing physical data, measurement and mapping activities are carried out. Measurement and mapping activities include making registration base maps, delimiting land parcels, measuring and mapping land parcels and making registration maps, making land registers and making survey documents.¹² Then, Determination of boundaries of land parcels, in order to obtain physical data required for land registration, the land parcels to be mapped are measured, after determining their location, boundaries and according to the need, boundary markings are placed in each corner of the land parcel concerned. In determining the boundaries of land parcels for systematic land registration and sporadic land registration, efforts are made to arrange boundaries based on the agreement of the interested parties. Placement of boundary signs including their maintenance must be carried out by the holder of the land rights concerned.

Determination of the boundaries of land parcels that are already owned with a right that has not been registered or which have been registered but there is no measurement letter/drawing of the situation that is no longer in accordance with the actual situation, is carried out by the Adjudication Committee in systematic land registration or by the Head of the Land Office in registration. For customary land rights, land rights certificates that are registered can be given on behalf of members of the customary community or community residing in the area, the management of the cooperative or unit part of the village, or the customary head/chairman/leader of other community groups.¹³ Communal rights granted to customary law communities that have been registered, the use and utilization of their land can be cooperated with third parties in accordance with the provisions of the legislation and the agreement of the parties.¹⁴ Registration of land rights with general registers that do not have the strength of evidence does not have the strength of evidence here are general lists that do not prove the person

12 Della Monika, Analisis Yuridis Eksistensi Pejabat Pembuat Akta Tanah (PPAT) Dalam Perspektif Pendaftaran Tanah Di Kecamatan Tanjungpinang Timur (Studi Penelitian Dikantor Notaris Dan Pejabat Pembuat Akta Tanah Afika Hersany), *Jurnal Selat*, Vol.7 No.1 2020, page. 65–86

13 Disantara, *Konsep Pluralisme Hukum Khas Indonesia Sebagai Strategi Menghadapi Era Modernisasi Hukum*, page. 30.

14 RR. Catharina Dewi Wulansari, The Role of The Government in The Recognition of Customary Rights to Achieve Economic Development of Customary Law Communities, *Journal of Indonesian Adat Law (JIAL)*, Vol.1 No.1 2020, page.109-45.

registered in it is a legal right holder according to law.¹⁵

Because the general registers have no evidence, there is no incentive for the old rights holders to register their rights in the general registers. The registration of rights is intended for new rights holders to register their rights, then the registration is used as a condition for the transfer of rights.¹⁶ Such registration of rights is called registration of deeds.¹⁷ After that, the certificate is issued for the benefit of the right holder concerned in accordance with the physical data and juridical data that have been registered in the land book.¹⁸ The certificate may only be submitted to the party whose name is listed in the land book concerned as the right holder or to another party authorized by him. Regarding land rights or ownership rights to flats that are jointly owned by several people or legal entities, a certificate is issued, which is received by one of the holders of joint rights upon the written appointment of the other joint rights holders. As for matters relating to land rights or ownership rights to a jointly owned apartment unit, a certificate may be issued as many as the number of joint rights holders to be given to each respective joint right holder, which contains the name and the size of each share of the joint right.

2. The Legal Certainty of Land Ownership Right in Registration's Context

Authority Property rights in the UUPA are hereditary, strongest and most complete rights that people can have on land.¹⁹ The nature of property rights is different from the nature of other rights, namely the strongest and fullest that people can have on land. The granting of this character does not mean that the right is an absolute, unlimited and inviolable right as an *eigendom* right according to the original meaning. Such a nature will clearly contradict the nature of customary law and the social function of each right.²⁰ The strongest and most complete word is intended to distinguish between Cultivation Rights, Building Use Rights, Use Rights, and others, namely to show that among the rights to land owned by people, property rights are the strongest. The characteristics of

15 JT Pareke and Fahmi Arisandi, Pengakuan Masyarakat Hukum Adat dan Perlindungan Wilayah Adat Di Kabupaten Rejang Lebong, *Bina Hukum Lingkungan*, Vol.4 No.2, 2020, page.317.

16 Dicky Eko Prasetyo, Fradhana Putra Disantara, and Nadia Husna Azzahra, *Menanti Legalisasi Desa Adat Sendi, Sampai Kapan?*, *Mediajatim.Com*, 2020, <https://mediajatim.com/2020/09/30/menanti-legalisasi-desa-adat-sendi-sampai-kapan/>.

17 Rr Catharina Dewi Wulansari, *Hukum Adat Indonesia - Suatu Pengantar*, 4th ed., PT Refika Aditama, Bandung, 2016, page. 79.

18 Abdul Muthallib, Pengaruh Sertifikat Hak Atas Tanah Sebagai Alat Bukti Dalam Mencapai Kepastian Hukum, *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan, Dan Ekonomi Islam*, Vol.12 No.1, 2020, page.21-43.

19 Nurbaedah Nurbaedah, Penyelesaian Sengketa Sumber Daya Agraria Pada Tanah Perkebunan Bekas Hak Guna Usaha, *DIVERSI: Jurnal Hukum*, Vol.6, No.2, 2020, page. 220-233.

20 Teuku Muttaqin Mansur, Sulaiman Sulaiman, and Hasbi Ali, Adat Court in Aceh, Indonesia: A Review of Law, *Jurnal Ilmiah Peuradeun*, Vol.8, Number 2, 2020, page. 423.

a negative system with a positive tendency in land registration as follows:²¹ (a) The name of the land owner listed in the land book register is the right owner of the land and is protected by law, and is a proof of the highest rights; (b) Every incident of transfer of name through careful researchers, the terms and procedures are based on the principle of openness (*openbaar heidssbeginsele*); (c) The boundaries of each parcel of land (*persil*) are measured and drawn on the registration map with a scale of 1:1000. This size makes it possible to re-examine the boundaries of parcels in the event of a boundary dispute; (d) The land owner listed in the land book and certificate can still be contested through the district court by the National Land Agency.

The land registration system adopted by the UUPA is a mixture of a positive system and a negative system. The reason is that the actual owner gets legal protection while the positive system turns out to be with the intervention of the government, namely PPAT and the Land Registration Section examines the truth of every transfer of land rights. Another opinion from Sunaryati Hartono and Bachtar Efendi, is that the time has come to change the UUPA from a negative system to a positive system in land registration, so that land title certificates are the only means of proof of rights. If later it can be proven that the certificate is counterfeit, or falsified, or obtained illegally, of course, this will result in the certificate being automatically invalidated. The occurrence of ownership rights to land according to Article 22 Paragraph (10) of the UUPA it is stated that the occurrence of property rights according to Customary Law is regulated by a Government Regulation. Whereas in Paragraph (2) it is stated that, in addition to the method as regulated by government regulations, property rights can occur due to Government stipulation, according and conditions stipulated by government regulations and statutory provisions. This aims to prevent things that harm the public and state interests.

Article 5 of the UUPA which states that "Agrarian law that applies to the earth, water and space is customary law, as long as it does not conflict with national and state interests, which is based on the unity of the nation with Indonesian socialism as well as with the regulations contained in this law with other laws and regulations, everything by taking into account the elements that rely on religious law." The right of ownership to the land needs to be registered by the right holder or his proxies to administer the certificate. The procedure for administering and issuing certificates must go through 3 stages, namely application of rights, measurement and registration of rights and issuance of certificates. Land registration is held to ensure legal certainty. This land registration is held to meet the needs of the community and the government. To meet this need, the government conducts data collection on land tenure, especially involving land owners. Land registration was originally carried out for physical purposes and in terms of guaranteeing

21 Katarzyna Zombory, The Agricultural Land Trade: Theory and Practice, *Journal of Agricultural and Environmental Law*, Vol.16 No.30, 2021.

legal certainty.

In land registration, there are 2 (two) *stelsels*, namely *negative stelsel* and *positive stelsel*.²² In a positive system, land registration adopts the attitude that what has been registered is guaranteed to reflect the actual situation, both regarding the subject of the right and the object of the right. The government guarantees the correctness of the registered data and for this purpose, the government has examined the truth and validity of each file submitted for registration before being included in the land registers so that the subject of the rights registered as the holder of the land rights is the legal right holder according to the law and does not can be contested on any basis or for any reason. Likewise, the encumbered mortgage rights as well as the status and condition of the object of the right are certain. The negative aspect in this system is that because both the subject and object of the rights are certain, it is impossible for parties who feel they are the actual right holders to file a lawsuit or claim against everything that has been recorded in the certificate.

Meanwhile, in a negative system, the implementation of recording in the bookkeeping of a right in the register of land books on behalf of the subject of the right, does not result in that the subject of the right who should be entitled to the land will lose his right. Subjects who feel they have rights to the land can still defend their rights by filing a lawsuit against the parties whose names are registered in the land book.²³ The negative side of this system can create legal uncertainty, because at any time the subject of rights who feel they have a right or feel that their rights have been violated by another party can file a lawsuit against another party whose name has been registered in a land certificate.

Land registration in the UUPA does not follow a pure negative system but a negative system with positive tendencies.²⁴ The definition of a positive tendency is the active role of implementing land registration. This active role is, for example, investigating the origin of the land very carefully as referred to in Article 3 Paragraph (2) of Government Regulation Number 10 of 1961; and the announcement of 3 (three) months for the first land registration Article 6 Paragraph (1) of Government Regulation Number 10 of 1961 concerning Land Registration. Land registration activities for the first time produce certificates of proof of rights in the form of certificates on land parcels that already have rights and certificates of ownership rights over flat units. Certificate is a certificate of proof of rights as referred to in Article 19 Paragraph (2) letter c of the BAL for land rights, management rights, *waqf* land, ownership rights to flat units and mortgage rights, each of

22 Fairus Augustina Rachmawati, Shafa Amalia Choirinnisa, and Latif Latif, Integrated Land Registration System: Between Legal Certainty and Challenges (Case of Semarang City), *Indonesian Journal of Advocacy and Legal Services*, Vol.3 No.2 2021, page.217–232.

23 Intan Haryanti and Rakhmat Bowo Suharto, The Juridical Overview Of Customary Land Registration, *Law Development Journal*, Vol.3 No.2 2021, page. 272.

24 Elza Syarief, Electronic Land Certificates: Its Goals and Challenges, *Research Horizon* Vol.1 No.4 August 30, 2021, page.120–25

which has been recorded in the land book. Article 13 Paragraph (3) Government Regulation Number 10 of 1961 concerning Land Registration reads that "*The letter of proof of registered land rights is called a certificate, which is a copy of the land book and a measuring document after being sewn together together with a cover paper whose shape is determined by the Minister of Agrarian Affairs.*"

The provision of Article 32 Paragraph (2) of Government Regulation Number 24 of 1997 concerning Land Registration and its explanation states that land registration whose implementation is ordered by the UUPA does not use a positive system where the truth of the data presented is fully guaranteed, but the system adopted is a negative system. In the negative system, the government does not fully guarantee the correctness of the data presented, however, it does not mean that the land registration adopted is a pure negative system.²⁵ This can be seen in Article 19 Paragraph (2) letter c of the UUPA which states that the certificate of proof of rights issued as referred to in Article 23 of the UUPA, and Articles 32 and 38 of PP Number 24 of 1997 concerning Land Registration, serves as a strong evidence. Article 23 of the UUPA states property rights. Likewise, every transfer, cancellation and encumbrance with other rights must be registered. Registration is a strong means of proof regarding the abolition of property rights as well as the transfer and release of these rights. Land registration activities for the first time produced a certificate of proof of rights, in the form of a certificate.

In addition, from the provisions regarding the procedures for collecting, processing, storing and presenting physical data and juridical data as well as the issuance of certificates in Government Regulation Number 24 of 1997 concerning land registration, it is clear that there is an effort to obtain and present correct data as far as possible due to land registration aims to ensure legal certainty. The provisions of Article 32 Paragraph (2) of Government Regulation Number 24 of 1997 concerning Land Registration, aims to maintain a negative system and on the other hand in a balanced way provide legal certainty to other parties who have good intentions Government Regulation and/or own a plot of land and are registered as holders of rights in the land book with the issuance of a certificate as strong evidence. Government Regulation Number 24 of 1997 concerning Land Registration mentions the term good faith in relation to physical control over land (Article 24) and holders of land rights certificates (Article 32); than Article 24 Paragraph (2) letter a states "*The control is carried out in good faith and openly by the person concerned as having the right to the land, and is strengthened by the testimony of a person who can be trusted.*"

Good faith has a fairly broad meaning, this word expresses honest feelings without having to examine them in detail, which will turn selfishness into sacrifice. The law removes deceit from agreements and cunning, dangerous moves, dishonest agreements, misguided

25 Farid Wajdi and Rahmat Ramadhani, Legal Problems of Land Services Online, *International Journal Reglement & Society*, Vol.3 No.1 2022, page. 19–29.

calculations, devious and evil attempts at deception, behind the mask of ability and wisdom. Harnessing trust, simplicity and ignorance. In general, the definition of good faith is honesty in reality that must be carried out in every transaction made.²⁶ Article 32 Paragraph (2) of PP Number 24 of 1997 concerning Land Registration states:

"In the event that a certificate of land has been legally issued in the name of the person or legal entity that acquires the land in good faith and actually controls it, then the other party who feels If within 5 (five) years from the issuance of the certificate, they have not submitted a written objection to the certificate holder and the Head of the Land Office concerned or have not filed a lawsuit to the Court regarding land tenure or issuance of land rights certificate".

Although there are provisions that limit that objections or claims on registered land rights can only be filed within a period of 5 (five) years, this period is practically not binding. Because, this expiry provision does not stand alone, but requires the existence of good ethics that must be determined by the judge, besides that the certificate must be issued legally and the land is actually controlled.

In terms of legal certainty, Government Regulation No. 24/1997 on Land Registration provides a stronger guarantee than Government Regulation No. 10/1961 on Land Registration. Because based on Government Regulation Number 10 of 1961, there is no specified period of time to provide certainty, so that the certificate as proof of land ownership can still be canceled if there is evidence of data used as the basis for the issuance of defects. Meanwhile, Government Regulation No. 24 of 1997 concerning Land Registration states that after a period of 5 years after being issued, the land certificate can no longer be contested, so that it will provide relatively more legal certainty and legal protection. However, it is not a matter of five years being sued or not, but the process of issuing land certificates must be correct and the costs are affordable for the people and without compromising the sense of justice for legal subjects who are entitled to it. In the legal act of land rights, the principle of *nemo plus juris* is known in addition to the principle of good faith.²⁷ This principle in land law has the power to provide evidence for maps and general lists in the Land Office. The application of this principle means providing protection to the actual right holder so that it is always possible to file a lawsuit for those who feel they own and can prove their ownership to other parties whose names have been registered in the public register at the Land Office. In the negative publicity system, the

26 O. S. Ladeinova, Moral-Philosophical Expertise as a Tool of Evolution of Law (A Case Study of Program-Strategic Documents), *Actual Problems of Russian Law*, Vol.0 No.7, 2019, page. 21–26.

27 Tari Annisha Fhonna et al., Implementation of the Complete Systematic Land Registration Program in Aceh, Indonesia, *Otoritas: Jurnal Ilmu Pemerintahan*, Vol.11 No.2 2021, page.108–24.

state does not guarantee the truth of the data presented.

But even so it is not intended to use a purely negative publication system. This can be seen in Article 19 Paragraph (2) letter c of the UUPA, that the certificate of proof of rights issued is valid as strong evidence and in Articles 23,32 and 38 of the UUPA that the registration of various legal events is a strong means of proof. In addition, from the provisions concerning procedures for data collection, data processing, storage and presentation of physical data and juridical data as well as the issuance of certificates in this government regulation, it is clear that as far as possible efforts are made to obtain and present correct data, because land registration is to ensure legal certainty. This provision aims, on the one hand, to stick to the negative publication system and on the other hand to balance providing legal certainty to parties who in good faith control a plot of land and are registered as right holders in the land book, with a certificate as evidence, which according to the UUPA act as a strong evidence. Legal certainty in land registration has a goal to achieve legal protection for holders of land rights, therefore any problems that arise when a dispute is rolling in court must go through a proof process. Basically the proof that rights holders must have in addition to certificates as formal evidence based on Article 1866 of the Civil Code, namely written evidence, witness evidence, suspicions, confessions, oaths can also be used other evidence in the form of testimonies such as for the purpose of registering land rights originating from old conversion rights based on Article 24 of Government Regulation Number 24 of 1997 concerning Land Registration which stipulates "*evidence used in addition to written evidence is also used for witness statements*".

Normatively legal certainty requires the availability of statutory regulations that are operationally able to support the implementation of all activities, empirically, the existence of these laws and regulations needs to be implemented consistently and consistently by supporting human resources.²⁸ Meanwhile, according to Van Apeldoorn, legal certainty means things that can be determined (*bepaalbaarheid*) from the law, in concrete matters.²⁹ The parties seeking justice (*yustisiabelen*) want to know whether the law is in a certain condition or thing, before starting with the case. Legal certainty of land rights is legal certainty focused on land ownership, so that there is legal certainty of land rights.³⁰ There are two things related to legal certainty of land rights, namely subject certainty, namely certainty regarding the right holder (land owner) and object certainty, namely certainty regarding the land, for example location, shape, area, boundaries and so on. UUPA and PP 24 of 1997 concerning Land Registration indicate a guarantee of legal

28 Louise Tee, Gently Reforming Land Registration: The Latest Law Commission Report and Draft Bill, *The Cambridge Law Journal*, Vol.55 No.2 1996, page.241–248.

29 Cécile Fabre, The Morality of Treason, *Law and Philosophy*, Vol.39 No.4 2020, page.427–461

30 Jan Gościński and Artur D. Kubacki, "Land Registration Concepts in Translation, *International Journal for the Semiotics of Law - Revue Internationale de Sémiotique Juridique*, Vol.34 No.5 2021, page.1451–1482.

certainty and legal protection of ownership of land rights, among others, to ensure legal certainty, by the government holding land registration throughout Indonesia according to the provisions of Article 19 Paragraph (1) of the UUPA.

Article 19 of the UUPA which instructs the government to carry out land registration throughout the territory of the Republic of Indonesia which will be regulated by Government Regulation Number 10 of 1961 which is replaced by Government Regulation Number 24 of 1997 concerning Land Registration where in carrying out land registration the Head of the Land Office is assisted by PPAT. Physical data is information regarding the location, boundaries, and area of land parcels and apartment units registered, including information regarding the existence of buildings or parts of buildings above them. Meanwhile, juridical data is information regarding the legal status of the registered land parcels and flats, the holders of their rights and the rights of other parties as well as other burdens that burden them. Article 32 Paragraph (2) Government Regulation Number 24 of 1997 concerning Land Registration confirms:

"A parcel of land that has been legally issued a certificate in the name of a person or legal entity that acquires the land in good faith and actually controls it, then the other party who feels that he has the right the land owner no longer demands the exercise of the said right if within 5 (five) years from the issuance of the certificate he does not file a written objection to the certificate holder and the relevant Head of the Land office or does not file a lawsuit to the Court regarding the control of the land or the issuance of the certificate."

People who have registered their lands are given land certificates, so that they can easily prove themselves as rights holders, in order to obtain legal certainty and protection in Article 4 PP Number 24 of 1997 concerning Land Registration. The certificate issued by the Regency/City Land Office is in accordance with the procedures established by the applicable land registration laws and regulations, and the issuance of the certificate is not juridical defects, i.e. there are no procedural defects, substance defects and authority defects, then the right holder gets a guarantee of certainty and legal protection.

D. CONCLUSION

The certificate is a proof of right that applies as a strong proof of land ownership. Land registration is carried out to obtain legal certainty and legal protection for rights holders (Article 19 Paragraph (2) c of the BAL). The process of registering land with the correct procedure, with good ethics and not juridical defects, the certificate issued by the Regency/City Land Office has strong evidentiary power. With the issuance of a certificate of land rights, the owner is given legal protection. Certificate as a strong proof of physical data and juridical data contained in it, as long as the physical data and juridical data are in accordance with the data contained in the

letter of measurement and the relevant land book. Furthermore, the physical data and juridical data contained in it must be accepted as correct data, both in carrying out daily legal actions and in litigation in court because the certificate can still be sued by the legal right holder by showing supporting evidence that the subject of the right is indeed entitled. Furthermore, Article 32 paragraph (2) of Government Regulation Number 24 of 1997 concerning Land Registration confirms that a parcel of land that has been legally issued a certificate in the name of the person or legal entity that acquires the land in good faith and actually controls it, then the other party who feels that he has the right to the land no longer demands the implementation of the right if within 5 (five) years from the issuance of the certificate there is no written objection to the holder of the certificate right and the head of the land office concerned or does not file a lawsuit to the Court regarding the control of the land or the issuance of the certificate

BIBLIOGRAPHY

Books:

- Marzuki, Peter Mahmud., 2017, *Penelitian Hukum: Edisi Revisi*. 13th ed., Kencana, Jakarta;
- Sutedi, Adrian., 2014, *Peralihan Hak Atas Tanah Dan Pendaftarannya*, Sinar Grafika, Jakarta;
- Wulansari, Rr Catharina Dewi., 2016, *Hukum Adat Indonesia - Suatu Pengantar*. 4th ed., PT Refika Aditama, Bandung;

Journals:

- Dewi, Aliya Sandra., Mekanisme Pendaftaran Tanah Dan Kekuatan Pembuktian Sertifikat Kepemilikan Tanah, *Jurnal Dinamika Masalah Hukum Dan Keadilan*, Vol.9 No.1 2018;
- Disantara, Fradhana Putra., Konsep Pluralisme Hukum Khas Indonesia Sebagai Strategi Menghadapi Era Modernisasi Hukum, *Al-Adalah: Jurnal Hukum Dan Politik Islam*, Vol.6 No.1 January 1, 2021;
- Fabre, Cécile., The Morality of Treason, *Law and Philosophy* Vol.39 No.4 August 26, 2020;
- Fhonna, Tari Annisha, Dyah Mutiarin, Herdin Arie Saputra, and Ikhwan Rahmatika Latif., Implementation of the Complete Systematic Land Registration Program in Aceh, Indonesia, *Otoritas: Jurnal Ilmu Pemerintahan*, Vol.11 No.2 October 31, 2021
- Gościński, Jan, and Artur D. Kubacki., Land Registration Concepts in Translation, *International Journal for the Semiotics of Law - Revue Internationale de Sémiotique Juridique* Vol.34 No.5 November 19, 2021;

- Haryanti, Intan, and Rakhmat Bowo Suharto., The Juridical Overview Of Customary Land Registration, *Law Development Journal*, Vol.3, No.2 July 29, 2021;
- Kristiani, Verlia., Hukum Yang Berkeadilan Bagi Hak Ulayat Masyarakat Hukum Adat (Kajian Dan Implementasi), *ADIL: Jurnal Hukum*, Vol.11 No.1 August 24, 2020;
- Ladeinova, O. S., Moral-Philosophical Expertise as a Tool of Evolution of Law (A Case Study of Program-Strategic Documents), *Actual Problems of Russian Law*, No.7 August 25, 2019;
- Larasati, Ayu, and Raffles Raffles., Peralihan Hak Atas Tanah Dengan Perjanjian Jual Beli Menurut Hukum Pertanahan Indonesia, *Zaaken: Journal of Civil and Business Law*, Vol.1 No.1 2020;
- Mansur, Teuku Muttaqin, Sulaiman Sulaiman, and Hasbi Ali., Adat Court in Aceh, Indonesia: A Review of Law, *Jurnal Ilmiah Peuradeun* Vol.8, No.2, May 30, 2020;
- Monika, Della., Analisis Yuridis Eksistensi Pejabat Pembuat Akta Tanah (PPAT) Dalam Perspektif Pendaftaran Tanah Di Kecamatan Tanjungpinang Timur (Studi Penelitian Dikantor Notaris Dan Pejabat Pembuat Akta Tanah Afika Hersany), *Jurnal Selat*, Vol.7 No.1 April 17, 2020;
- Mukmin, Abdul, and Andri Pranata., Peran Kantor Pertanahan Kota Samarinda Dalam Penyelesaian Sengketa Dan Konflik Pertanahan, *Yuriska: Jurnal Ilmiah Hukum*, Vol.12 No.2 September 8, 2020;
- Murni, Christiana Sri., Pendaftaran Peralihan Hak Milik Atas Tanah Karena Pewarisan, *Lex Librum: Jurnal Ilmu Hukum*, Vol.6 No.2 2020;
- Murni, Christiana Sri., Peran Pejabat Pembuat Akta Tanah Dalam Proses Peralihan Jual Beli Hak Atas Tanah, *Jurnal Kajian Pembaruan Hukum*, Vol.1 No.1, March 22, 2021;
- Muthallib, Abdul., Pengaruh Sertifikat Hak Atas Tanah Sebagai Alat Bukti Dalam Mencapai Kepastian Hukum, *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan, Dan Ekonomi Islam*, Vol.12 No.1 July 11, 2020;
- Nurbaedah, Nurbaedah., Penyelesaian Sengketa Sumber Daya Agraria Pada Tanah Perkebunan Bekas Hak Guna Usaha, *DIVERSI: Jurnal Hukum*, Vol.6, No.2 2020;
- Ong Argo Victoria, Ade Riusma Ariyana, Devina Arifani., *Code of Ethics and Position of Notary in Indonesia*, Sultan Agung Notary Law Review, Vol.2 No.4 2020;
- Pareke, JT, and Fahmi Arisandi., Pengakuan Masyarakat Hukum Adat Dan Perlindungan Wilayah Adat Di Kabupaten Rejang Lebong, *Bina Hukum Lingkungan*, Vol.4 No.2 April 26, 2020;
- Rachmawati, Fairus Augustina, Shafa Amalia Choirinnisa, and Latif Latif.,

Integrated Land Registration System: Between Legal Certainty and Challenges (Case of Semarang City), *Indonesian Journal of Advocacy and Legal Services*, Vol.3 No.2, July 28, 2021);

Sibuea, Harris Yonatan Parmahan., Arti Penting Pendaftaran Tanah Untuk Pertama Kali, *Jurnal Negara Hukum*, Vol.2 No.2 2011;

Syarief, Elza., Electronic Land Certificates: Its Goals and Challenges, *Research Horizon* Vol.1 No.4 August 30, 2021;

Tee, Louise., Gently Reforming Land Registration: The Latest Law Commission Report and Draft Bill, *The Cambridge Law Journal*, Vol.55 No.2 July 16, 1996;

Wajdi, Farid, and Rahmat Ramadhani, Legal Problems of Land Services Online, *International Journal Reglement & Society*, Vol.3 No.1 2022;

Wulansari, RR. Catharina Dewi., The Role of The Government in The Recognition of Customary Rights to Achieve Economic Development of Customary Law Communities, *Journal of Indonesian Adat Law (JIAL)*, Vol.1 No.1 October 15, 2020;

Zombory, Katarzyna., The Agricultural Land Trade: Theory and Practice, *Journal of Agricultural and Environmental Law*, Vol.16 No.30 2021;

Internet:

Prasetio, Dicky Eko, Fradhana Putra Disantara, and Nadia Husna Azzahra. *Menanti Legalisasi Desa Adat Sendi, Sampai Kapan?* *Mediajatim.Com*, 2020.

<https://mediajatim.com/2020/09/30/menanti-legalisasi-desa-adat-sendi-sampai-kapan/>.