

LEGAL PROTECTION AND LEGAL CERTAINTY IN INDONESIA'S LAND TITLE REGISTRATION SYSTEM

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Abstract. *This research aims to scrutinize challenges in Indonesia's land title registration system, focusing on legal protection and certainty for land title holders, particularly when titles are acquired through binding agreements. Emphasis is placed on publicity principle, exploring its role in ensuring transparent access to information about land titles. The normative legal research method, employing a normative juridical approach, involves a thorough examination of legal materials, including theories, concepts, and legislation such as Regulation Number 16 of 2021, Government Regulation Number 24 of 1997, and Government Regulation of the Republic of Indonesia Number 18 of 2021. Results highlight a significant gap between land title deeds based on agreements and the necessity for proper registration to guarantee legal protection. Failure to register undermines the "openbaarheid" principle, turning agreements into private arrangements. Addressing this gap is crucial for establishing a transparent land title registration system, ensuring uniform legal protection for all holders, and reducing potential disputes. The implications of this research extend to policymakers, legal practitioners, and stakeholders, offering insights to enhance the transparency and effectiveness of Indonesia's land administration. Policymakers can leverage these findings to refine regulations, aligning the system with principles of openness and accessibility, fostering a fair land tenure system, and supporting sustainable development.*

Keywords: Land Title Registration, Legal Protection, Land Tenure System, Agrarian Law.

1. INTRODUCTION

The Land registration is an administrative procedure conducted by land title owners, involving the transfer, granting, and recognition of new rights.¹ This aligns with the objectives of Indonesia's Basic Agrarian Law (BAL), aiming to establish the basis for ensuring legal certainty in land title for the populace. The execution of Article 19 of the BAL encompasses land registration, representing a governmental initiative to furnish legal assurance.² This assurance encompasses clarity on the right holder (subject of land title), as well as the location, boundaries, and area of the land parcel (object of land title), reinforcing the certainty of land ownership. The issuance of a certificate through land registration provides tangible proof of land title, assuring the rights

¹ Enemark, Stig, and Ian Williamson. "Capacity building in land administration—A conceptual approach." *Survey review* 37, no. 294 (2004): 641.

² Salain, Made Suksma Prijandhini Devi, and I. Palguna. "The Regulation of the Ownership of Flats by Foreigners after the Enactment of the Job Creation Law." *Indon. L. Rev.* 12 (2022): 4.

holder, even in commercial transactions. Sustained efforts in land registration are crucial to realizing the full potential of land in contributing to human prosperity. Consequently, legal certainty is established for rights holders in land ownership and utilization. The outcome of land registration activities is the creation of certificates,³ offering concrete legal confirmation regarding the rights type, subject, and object. Unlike other forms of documentation, a certificate serves as a robust indicator of rights, presumed valid unless proven otherwise in court with supplementary evidence.^{4,5} Possessing a certificate for a plot of land not only ensures legal certainty but also imparts a sense of security, facilitates ease of sale, and contributes to an increase in land value.

The registration of land titles in Indonesia continues to face challenges related to legal protection and certainty, particularly for titles acquired through sale and purchase agreements or lease agreements.⁶ An issue at hand is the lack of transparency and efficiency in the land registration process.⁷ The National Land Agency (*Badan Pertanahan Nasional/BPN*) oversees land title registration in Indonesia but grapples with the management of a high volume of land transactions and disputes in the country. Prior to the enactment of Regulation Number 16 of 2021 by the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia, land titles based on binding sale and purchase agreements or lease agreements were not eligible for registration at the Land Agency Office. However, with the introduction of Government Regulation Number 18 of 2021, and its implementation specified in Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation No. 16 of 2021, rights acquired through sale and purchase agreements, as well as lease rights, can now be registered.

Research on the land title registration system in the Indonesian agrarian legal framework post the enactment of Regulation Number 16 of 2021 reveals a negative system that incorporates positive elements. This system, governed by Government Regulation Number 24 of 1997 and Government Regulation of the Republic of Indonesia Number 18 of 2021, adopts a rights registration approach. The registration of land titles results in the issuance of letters as proof of rights, serving as robust evidence, as stipulated in Article 19 paragraph (2) letter c, Article 23 paragraph (2), Article 32 paragraph (2), and Article 38 paragraph (2) of the Basic Agrarian Law. Subsequent to the implementation of Regulation Number 16 of 2021, the land title registration system has transitioned to an electronic format. Therefore, the objective of this study is to elucidate the land title registration system within the Indonesian

³ Syarief, Elza. "Electronic Land Certificates: Its Goals and Challenges." *Research Horizon* 1, no. 4 (2021): 121.

⁴ Handoko, Widhi, and Ricco Survival Yubaidi. "Information Technology in Electronic Land Registration System as the Standard of Government Performance in the Industry 4.0 Revolution." *Lex Publica* 7, no. 1 (2020): 87.

⁵ Noor, Aslan. "Legal Status of Electronic Land Certificates in the Land Case Proof System in Indonesia." *International Journal of Cyber Criminology* 15, no. 1 (2021): 176.

⁶ Wijayanti, Tania, Yudho Taruno Muryanto, and M. Irnawan Darori. "Comparison of The Transfer of Land Rights to The Description Deed of Inheritance Rights." *Law Reform* 17, no. 1 (2021): 125.

⁷ Aditya, Trias, Eva Maria-Unger, Christelle vd Berg, Rohan Bennett, Paul Saers, Han Lukman Syahid, Doni Erwan et al. "Participatory land administration in Indonesia: Quality and usability assessment." *Land* 9, no. 3 (2020): 81.

agrarian legal framework subsequent to the enactment of Regulation Number 16 of 2021 by the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia. Additionally, the research seeks to examine the effectiveness of the land title registration system in affording legal protection and certainty to title holders who have entered into binding agreements for the sale and purchase of land.

2. METHODS

Land registration is an administrative procedure conducted by land title owners, involving the transfer, granting, and recognition of new rights.⁸ This aligns with the objectives of Indonesia's Basic Agrarian Law (BAL), aiming to establish the basis for ensuring legal certainty in land title for the populace. The execution of Article 19 of the BAL encompasses land registration, representing a governmental initiative to furnish legal assurance.⁹ This assurance encompasses clarity on the right holder (subject of land title), as well as the location, boundaries, and area of the land parcel (object of land title), reinforcing the certainty of land ownership. The issuance of a certificate through land registration provides tangible proof of land title, assuring the rights holder, even in commercial transactions. Sustained efforts in land registration are crucial to realizing the full potential of land in contributing to human prosperity. Consequently, legal certainty is established for rights holders in land ownership and utilization. The outcome of land registration activities is the creation of certificates,¹⁰ offering concrete legal confirmation regarding the rights type, subject, and object. Unlike other forms of documentation, a certificate serves as a robust indicator of rights, presumed valid unless proven otherwise in court with supplementary evidence.^{11,12} Possessing a certificate for a plot of land not only ensures legal certainty but also imparts a sense of security, facilitates ease of sale, and contributes to an increase in land value.

The registration of land titles in Indonesia continues to face challenges related to legal protection and certainty, particularly for titles acquired through sale and purchase agreements or lease agreements.¹³ An issue at hand is the lack of transparency and efficiency in the land registration process.¹⁴ The National Land Agency (*Badan Pertanahan Nasional*/BPN) oversees land title registration in Indonesia but grapples

⁸ Enemark, Stig, and Ian Williamson. "Capacity building in land administration—A conceptual approach." *Survey review* 37, no. 294 (2004): 641.

⁹ Salain, Made Suksma Prijandhini Devi, and I. Palguna. "The Regulation of the Ownership of Flats by Foreigners after the Enactment of the Job Creation Law." *Indon. L. Rev.* 12 (2022): 4.

¹⁰ Syarief, Elza. "Electronic Land Certificates: Its Goals and Challenges." *Research Horizon* 1, no. 4 (2021): 121.

¹¹ Handoko, Widhi, and Ricco Survival Yubaidi. "Information Technology in Electronic Land Registration System as the Standard of Government Performance in the Industry 4.0 Revolution." *Lex Publica* 7, no. 1 (2020): 87.

¹² Noor, Aslan. "Legal Status of Electronic Land Certificates in the Land Case Proof System in Indonesia." *International Journal of Cyber Criminology* 15, no. 1 (2021): 176.

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with the management of a high volume of land transactions and disputes in the country. Prior to the enactment of Regulation Number 16 of 2021 by the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia, land titles based on binding sale and purchase agreements or lease agreements were not eligible for registration at the Land Agency Office. However, with the introduction of Government Regulation Number 18 of 2021, and its implementation specified in Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation No. 16 of 2021, rights acquired through sale and purchase agreements, as well as lease rights, can now be registered.

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3. RESULTS AND DISCUSSION

3.1. Indonesian Land Laws and Primary Land Titles

The possession of land title certificates holds great significance in affording protection to the rights of Indonesian citizens over the respective land and aligns with the fundamental objective of the Basic Agrarian Law, which is to establish a legal foundation for ensuring certainty. To achieve this legal certainty, the process of land registration is undertaken.¹⁵ Land ownership certificates are pivotal in safeguarding the rights of Indonesian citizens concerning their land. The establishment of the Basic Agrarian Law (BAL) specifically aims to guarantee legal certainty in this context, with the registration of land playing a crucial role in fulfilling this objective. Recent research has underscored the indispensable role of issuing land certificates in enhancing transparency and accountability in managing land-related affairs. Beyond protecting individual and communal rights, it acts as a mechanism for regulating land use and mitigating conflicts. Consequently, land certificates play a vital role in protecting the

¹⁵ Syarif, Elza. "Electronic Land Certificates." 119. See also, Anitasari, Rahayu Fery. "Agrarian law: perspective of Indonesian agricultural policies." *South East Asia Journal of Contemporary Business, Economic and Law* 20, no. 4 (2019); Ramadhani, Rahmat, and Umami Salamah Lubis. "Opportunities and challenges for the Badan Pertanahan Nasional (BPN) in handling land cases in the new normal era." *Legality: Jurnal Ilmiah Hukum* 29, no. 1 (2021): 8.

interests of the Indonesian people and fostering sustainable development within the country.¹⁶

The certificate serves as robust evidence, and unless proven otherwise, the physical and juridical data it contains must be accepted as accurate. The veracity of the data within the certificate is presumed correct unless contested by an opposing party, as stipulated in the explanation of Article 32 paragraph (1) of Government Regulation No. 24 of 1997.¹⁷ Emphasizing the significance of certificates, they are crucial as formidable evidence in various legal proceedings. The acknowledgment of the accuracy of physical and juridical data within a certificate is vital due to its inherent validity and authenticity, reinforcing its capacity to validate information presented by individuals or entities. In legal actions, including court litigation, certificates play a pivotal role in ascertaining the veracity of claims made by involved parties. Therefore, maintaining the accuracy and factual integrity of the data within a certificate is imperative, as any discrepancies can have profound implications in legal proceedings. The importance of certificates is explicitly outlined in the elucidation of Article 32 paragraph (1) of Government Regulation No. 24 of 1997, underscoring their critical role in legal matters.

To ascertain a land right, the initial step involves its registration to establish a robust legal foundation. The legal basis governing land registration in Indonesia is articulated in Article 19, paragraph (1) of Law No. 5 of 1960, also known as the Basic Agrarian Law (BAL). The BAL outlines the provisions for land registration through Government Regulation No. 10 of 1961, subsequently superseded by Government Regulation No. 24 of 1997, enacted on July 8, 1997, and enforced on October 8, 1997. The detailed and comprehensive implementation of the provisions in Government Regulation No. 24 of 1997 is further delineated in the Regulation of the Minister of Agrarian Affairs/Head of BPN No. 3 of 1997 concerning Land Registration.

The enactment of the BAL marked a pivotal shift in land law, transitioning towards Indonesian agrarian law, placing these matters directly within governmental purview.¹⁸ This transformation has led to fundamental changes in the structural aspects of legal instruments, underlying concepts, and methods of dispute resolution. The Basic Agrarian Law (BAL) is mandated to serve the interests of the Indonesian populace and align with contemporary demands.¹⁹ It stands as a monumental legislative framework that has significantly altered the landscape of land law in Indonesia. By centralizing control over land-related issues to the government, it has prompted substantial modifications in legal instruments, conceptual foundations, and approaches to dispute resolution. Emphasizing responsiveness to societal needs, the BAL holds a pivotal role in shaping and regulating land-related matters in Indonesia.

Engaging in the buying and selling of land establishes a reciprocal obligation, where both parties are mutually bound. Each commitment within such transactions involves

¹⁶ Lisdiyono, Edy. "Land Procurement for Public Interest and Spatial Planning: Legal and Juridical Implications." *Lex Publica* 4, no. 2 (2017): 771.

¹⁷ Suharyono, Suharyono. "Legal Assurance and Legal Protection in Land Registration in Indonesia." *Sriwijaya Law Review* 3, no. 1 (2019): 51.

¹⁸ Neilson, Jeff. "Agrarian transformations and land reform in Indonesia." *Land and Development in Indonesia* (2016): 251.

¹⁹ Lucas, Anton E., Carol Warren, and Anton E. Lucas. *Land for the people: The state and agrarian conflict in Indonesia*. Ohio: Ohio University Press, 2013.

one party acquiring and asserting rights, while the other fulfills corresponding obligations, encompassing economic values and legal status.²⁰ Consequently, the enforceability of an agreement does not grant unrestricted freedom to the involved parties; they are subject to legal constraints. In a land transaction, the seller possesses the right to sell and transfer land ownership to the buyer, while the buyer is obligated to make the agreed monetary payment and adhere to the sale's terms and conditions. Simultaneously, the seller is obligated to furnish all necessary documents and information concerning the property, and the buyer has the right to conduct due diligence, ensuring the absence of encumbrances or legal issues. Adherence to legal requirements and regulations governing land sales is imperative for both parties to preclude future legal disputes. Therefore, a comprehensive understanding of one's rights and obligations is essential in ensuring the success and legal validity of a land transaction.

The process of buying and selling land can potentially lead to disputes arising from differences in values, interests, opinions, perceptions of land tenure and ownership status, and relevant land use among the involved individuals or legal entities.²¹ Instances where parties attempt to execute agreements based on rights and obligations not mutually agreed upon can result in disputes. These conflicts may stem from various reasons, such as unclear legal boundaries or disagreements over land use, involving both buyers and sellers and even parties with adjacent properties. Resolving such disputes often necessitates the expertise of legal professionals like lawyers, mediators, or arbitrators, given the complex legal issues involved. Furthermore, these disputes can lead to delays and financial losses in land transactions, with far-reaching consequences. To preempt such disputes, establishing clear agreements, backed by legal documentation, and seeking guidance from a professional and experienced real estate agent throughout the process is crucial. A thorough comprehension of the legal aspects governing land transactions is vital for ensuring seamless and successful dealings.²²

The land sale and purchase agreement hold a legally binding status, functioning as an executory agreement wherein, immediately upon its formation, both parties are not required to transfer either the land itself or the agreed-upon price—the central element of the agreement.²³ This agreement, constituting a formal and legal document between a seller and a buyer, is categorized as an executory agreement due to the reciprocal obligations imposed on both parties in adhering to the agreed-upon terms. Upon signing the agreement, neither party possesses the authority to transfer the land or the stipulated price until all conditions outlined in the agreement are met. Consequently, the seller is obliged to affect the transfer of land ownership, and the

²⁰ Widiyono, Try. "Legal Justice Discourse on Land Rights in the Indonesian Constitution." *Research Horizon* 2, no. 3 (2022): 409.

²¹ Sahide, Muhammad Alif K., and Lukas Giessen. "The fragmented land use administration in Indonesia—Analysing bureaucratic responsibilities influencing tropical rainforest transformation systems." *Land Use Policy* 43 (2015): 99.

²² Muntaqo, Firman, Mashudi Mashudi, Murzal Zaidan, and Fahmi Yoesmar Ar-Rasyidi. "The Synchronization Process of Legal System in Tunggu Tubang Land Certification." *Jurnal Akta* 9, no. 1 (2022): 82.

²³ Santyaningtyas, Ayu Citra, and Rico Zubaidi. "Role of Land Deed Officials in Legal Satisfaction Guarantee for Complete Systematic Land Registration." *NOTARIIL Jurnal Kenotariatan* 5, no. 1 (2020): 52.

buyer is obligated to fulfill the agreed-upon payment. The agreement serves as a protective measure for both parties involved, ensuring a seamless and compliant execution of the sale in accordance with the mutually agreed-upon terms. During this phase, the parties must fulfill specific conditions whose parameters are defined by applicable laws and regulations, establishing the legal recognition of the land title transfer. Failure to meet these requirements during the land purchase/sale process may result in the inability to secure legal registration. The transfer of land ownership necessitates adherence to certain conditions established by the country's laws and regulations.²⁴ Compliance with these parameters is imperative to validate the legal recognition of the land title transfer. Non-compliance with these stipulations may lead to the inability to legally register the land purchase/sale. Consequently, it is crucial for parties involved in any land transaction to meticulously review and fulfill all legal requirements to mitigate the risk of encountering legal complications or disputes in the future.²⁵

Within the Basic Agrarian Law (BAL), several primary land titles are outlined, including Ownership Rights (*Sertifikat Hak Milik*/SHM), Cultivation Rights (*Hak Guna Usaha*/HGU), Building Use Rights (*Hak Guna Bangunan*/HGB), and Use Rights (*Hak Pakai*/HP). To establish robust legal certainty in land titles, it is imperative to register these rights at the National Land Agency (*Badan Pertanahan Nasional*/BPN) office, ensuring the issuance of an authentic deed. This necessity arises from the dynamic economic development and extensive land involvement in economic activities like buying, selling, and leasing. Consequently, there is a recognized need to provide legal protection and certainty for rights within the agrarian sector.²⁶ Article 19 of the BAL mandates the government to conduct land registration across the Republic of Indonesia. The obligation to register under the BAL encompasses land surveying, mapping, bookkeeping, land title registration, the transfer of these rights, and the issuance of valid land titles as compelling evidence.

This registration process yields registration maps, letters, information about the rightful owner (for clarity on land ownership rights), the status of individual rights, and any encumbrances on the land rights. Ultimately, it results in the issuance of a certificate, serving as robust proof. The overarching objectives of agrarian reform articulated in the BAL's preamble underscore its mission. Firstly, it lays the groundwork for a national agrarian law aimed at fostering prosperity, happiness, and justice for the state and its people, especially peasants, within the framework of a fair and prosperous society. Secondly, it establishes the foundations for the unity and simplicity of land law. Thirdly, it ensures legal certainty regarding land titles for the entire population.

3.2. Current Development in Land Title Registration System in Indonesia

Two distinct land registration publication systems are globally adopted and implemented, namely the positive publication system and the negative publication

²⁴ Aquilino, Aquilino. "The Land Law Reform in the Philippines State." *Jurnal Akta* 9, no. 1 (2022): 19.

²⁵ Sahlan, Sahlan, Rusli Ayyub, K. Armin, K. Armin, and Abraham Bekka. "The Implementation of Using of Land Rights for Industry." *Jurnal Akta* 9, no. 1 (2022): 52.

²⁶ Gellert, Paul K., and Andiko. "The quest for legal certainty and the reorganization of power: Struggles over forest law, permits, and rights in Indonesia." *The Journal of Asian Studies* 74, no. 3 (2015): 643.

system.²⁷ The differentiation between these systems hinges on the level of legal protection extended to individuals acting in good faith, particularly when the outcomes of the registration process are found to be invalid. The positive and negative publication systems represent alternative approaches employed by countries worldwide for managing land registration. The key distinguishing factor lies in the degree of legal safeguarding provided to those who have conducted themselves in good faith, especially in instances where the registration results are deemed invalid. This distinction holds significant implications for the legal status of property ownership and rights. Therefore, careful consideration of the merits of each system is essential for governments when determining the most suitable approach for their specific needs. The affirmation of the adopted land registration publication system in Indonesian land policy is evidenced in several court decisions. For instance, the Supreme Court Decision dated September 18th, 1975, No. 459 K/Sip/1975 declares, "Given the negative stelsel regarding land registers/registrations prevailed in Indonesia, the land registration of a person's name in the register does not mean absolute ownership of the land if its invalidity can be proven by another party."

The second legal precedent is reflected in the Supreme Court Decision dated July 2nd, 1974, No. 480K/Sip/1973, which asserts that "the transfer of land title according to Article 26 of the Basic Agrarian Law amended by Government Regulation No. 10 of 1961 must be made before the Land Deed Official and cannot be undertaken informally, as it is presently. The plaintiff is mandated to pursue the stipulated method".²⁸ In the event that the defendant refuses voluntary compliance with the agreement, the plaintiff is entitled to petition the court to validate and recognize the two private deeds, as well as to compel the defendant to jointly appear with the plaintiff before a Land Deed Official to execute a land deed for the two parcels. Land registration, as defined in Article 1, paragraph (9) of Government Regulation of the Republic of Indonesia Number 18 of 2021 regarding Management Rights, Land title, Flat Units, and Land Registration, comprises a series of continuous and regular governmental activities. These activities encompass the collection, processing, bookkeeping, presentation, and maintenance of physical and juridical data, including maps and lists, pertaining to land parcels, top-floor spaces, basements, apartment units, and the issuance of proof of rights for such properties. The objectives of land title registration within the land registration system, as outlined in Article 3 of Government Regulation No. 24 of 1997, are multifaceted. They include providing legal certainty and protection to the rights holder over a land parcel, apartment unit, or other registered rights, facilitating their ability to establish themselves as rightful holders of these rights. Additionally, it aims to furnish information to interested parties, including the government, enabling easy access to necessary data for legal actions concerning registered land parcels and apartment units. Furthermore, the overarching goal is to implement a well-organized land administration system.

To achieve the aforementioned land objectives, the implementation of land title registration must adhere to principles that are simple, safe, affordable, up-to-date, and

²⁷ Silviana, Ana, Yos Johan Utama, and Nurhasan Ismail. "Preferability of the positive-characterized negative publication in cadastral registration in Indonesia." *Journal of Critical Reviews* 7, no. 7 (2020): 980.

²⁸ Yulianto, Agus. "Implementation of Limitation of Prosecution of Land Rights to Ensure Legal Certainty for Rightsholders." *Unnes Law Journal: Jurnal Hukum Universitas Negeri Semarang* 5, no. 2 (2019): 221.

transparent.²⁹ This necessitates continuous enhancements to the land title registration system, aligning it with evolving developments and contemporary needs. The significance of land title registration cannot be overstated, particularly as land use remains a contentious global issue. Ensuring the protection and equitable distribution of land titles requires a registration process that is simple, safe, affordable, up-to-date, and transparent.³⁰ This implies the need for a system that is consistently updated to accommodate technological advancements, policy changes, and other influential factors, ensuring its ongoing effectiveness in achieving its goals.^{31,32} By doing so, we can contribute to the responsible and beneficial utilization of land for individuals, communities, and societies at large.

According to Martono *et al.*,³³ the land registration publication system adopted in Indonesia is a negative system that incorporates positive elements. It generates letters serving as strong evidence of rights, as articulated in Article 19, paragraph (2) letter c, Article 23, paragraph (2), Article 32, paragraph (2), and Article 38, paragraph (2) of the Basic Agrarian Law. However, it is not a pure negative publishing system, as a pure negative system would not utilize a rights registration system and would lack statements, as found in the Basic Agrarian Law articles, emphasizing the certificate as potent evidence. In line with the provisions in Article 32, paragraph (1), the certificate is a robust proof of rights, effective as long as the physical and juridical data align with those contained in the measuring document and the land title book.³⁴

There are two distinct land registration systems: the registration of deeds and the registration of titles. The land title registration system in the agrarian legal framework, post the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 16 of 2021, aims to streamline land title registration in line with contemporary requirements. This is in pursuit of the principles outlined in Article 2 of Government Regulation No. 24 of 1997, emphasizing simplicity, safety, affordability, being up-to-date, and transparent in the implementation of land registration.

The community necessitates a contemporary land title registration system, as mandated by the Basic Agrarian Law. This imperative has also served as the

²⁹ Kusmiarto, Kusmiarto, Trias Aditya, Djurdjani Djurdjani, and Subaryono Subaryono. "Digital transformation of land services in Indonesia: A Readiness Assessment." *Land* 10, no. 2 (2021): 127.

³⁰ Ehwi, Richmond J., and Lewis A. Asante. "Ex-post analysis of land title registration in Ghana since 2008 merger: Accra lands commission in perspective." *Sage Open* 6, no. 2 (2016): 2158244016643351.

³¹ Barnes, Andrew P., Iria Soto, Vera Eory, Bert Beck, Athanasios Balafoutis, Berta Sánchez, Jürgen Vangeyte, Spyros Fountas, Tamme van der Wal, and Manuel Gómez-Barbero. "Exploring the adoption of precision agricultural technologies: A cross regional study of EU farmers." *Land use policy* 80 (2019): 166.

³² Ølnes, Svein, Jolien Ubacht, and Marijn Janssen. "Blockchain in government: Benefits and implications of distributed ledger technology for information sharing." *Government information quarterly* 34, no. 3 (2017): 358.

³³ Martono, Dwi Budi, Trias Aditya, Subaryono Subaryono, and Prijono Nugroho. "The legal element of fixing the boundary for Indonesian complete cadastre." *Land* 10, no. 1 (2021): 52.

³⁴ Tegan, Hilaire. "Legal pluralism and land administration in West Sumatra: the implementation of the regulations of both local and nagari governments on communal land tenure." *The Journal of Legal Pluralism and Unofficial Law* 47, no. 2 (2015): 318.

foundation for the government's contemplation, aiming to actualize modernization in land sector services, enhance community service, and optimize the utilization of information and communication technology through the implementation of an electronic-based land services system. To achieve current and efficient land registration, the government has introduced an electronic land registration system through the issuance of the Regulation of the Minister of Agrarian and Spatial Planning (Peraturan Menteri ATR/BPN Number 1 of 2021) on January 12, 2021.

An electronic system comprises a series of devices designed for the preparation, collection, processing, analysis, storage, display, announcement, transmission, and/or dissemination of electronic information. The adoption of the electronic land registration system aims to generate electronic data and information in the land sector and/or electronic documents, ensuring the validity of rights holder data, physical data, and juridical data in the land sector. This authentication is maintained through the reliable, secure, and responsible implementation of the electronic system. The outcomes of this electronic system operation manifest in the form of electronic documents, which are either directly issued through the electronic system or are documents transferred from other media to electronic formats.

3.3. Legal Protection and Legal Certainty in Agreement-based Land Title Registrations

Juridical control of land denotes the existence of a right within that control, regulated by law, and involving the authority for physical control. An illustrative example is the legal lease of land, where the land remains the right of the owner, while physically, it is cultivated or utilized by the tenant within an agreed-upon period.³⁵ Land tenure can be categorized into two types: 1) Physical land tenure, and 2) Juridical land tenure. Land tenure encompasses determining who holds the right to own or control land. In certain instances, this control is legally stipulated, granting the legal authority to physically govern the land's utilization. This legal regulation is known as the juridical control of land. For instance, in a land lease arrangement, the owner retains the legal right to the land, while the tenant exercises physical control over it for a specified duration. The two main types of land tenure are physical, referring to actual physical control, and juridical, pertaining to the legal framework governing rights and responsibilities in land ownership and use.

Juridical control is rooted in rights safeguarded by law, typically granting the right holder the authority to physically govern the land in question. However, there exists a form of juridical control where, although it provides the authority to control land, the actual physical control is carried out by other parties. For instance, when land ownership is leased to a third party, the tenant assumes physical control, or when the land is governed by a party lacking legal rights. In such cases, the landowner, based on individual juridical control rights, retains the right to demand the physical handover of the land. It is noteworthy that juridical control over land does not necessarily entail the authority to physically control it. For example, creditors holding collateral rights over land possess juridical control rights, but the actual physical control remains with the landowner. Physical control over land titles may arise for various reasons.

³⁵ Hartanto, J. Andy. "Legal Aspects of Land Purchase/Sale Disputes in Indonesia." *Envtl. Pol'y & L.* 48 (2018): 82.

Juridically, when land constitutes an individual right, individual physical control is legally justified.³⁶ For instance, the acquisition of land title based on a sale and purchase agreement establishes legal control. In some cases, land may be physically controlled even without constituting a juridical right, such as when control is based on a lease agreement for land title or an agreement granting use rights, among others. Additionally, land may be physically controlled in bad faith, relying on an illegitimate right that constitutes a violation of the law. Examples include land title usurpation based on an invalid agreement or other acts violating legal norms. Such forms of land tenure often lead to disputes and legal processes in court. According to Government Regulation No. 24 of 1997, land title control obtained through a sale and purchase agreement must be registered at the local National Land Agency office within 7 days. However, the acquisition of land title based on a sale and purchase agreement or land lease cannot be registered, rendering it susceptible to disputes in the presence of parties with malicious intentions.

The concept of land title ownership encompasses a series of powers, obligations, or prohibitions for the right holder, dictating permissible actions, duties, or restrictions related to the entitled land. The essence of this right of control serves as the criterion for distinguishing between different land tenure rights.^{37,38} Land registration, as mandated by the Basic Agrarian Law and Government Regulation No. 24/1997, aims to provide legal certainty and protection to land title holders. This assurance is substantiated through evidence generated during the registration process, manifested in a land book and a land certificate, comprising a copy of the land book and a measurement certificate. The pivotal role of land registration lies in furnishing legal certainty and protection to landowners. The Indonesian government has established legal frameworks, including the Basic Agrarian Law and Government Regulation No. 24/1997, to govern the land registration process. Through this procedure, landowners acquire a land book and land certificate, serving as legal documentation of their land title. This documentation serves multiple purposes, such as averting land disputes, ensuring the legal recognition of land transactions, and supporting property investment through a secure and transparent framework for land dealings. Additionally, land registration aids governments in enforcing land taxation policies. In essence, land registration serves as a crucial instrument in fostering fair and efficient land management systems.³⁹

The challenges in the land sector necessitate thorough and meticulous attention from the government due to the crucial role land plays in meeting the essential needs of the community. Dealing with land issues places the government in a complex position where it must balance the roles of safeguarding public order and welfare while responding to the demands for accelerated economic development, which inherently

³⁶ Bedner, Adriaan. "Indonesian land law: Integration at last? And for whom." *Land and development in Indonesia: Searching for the people's sovereignty* (2016): 71.

³⁷ Mahfud, Muh Afif. "Progressive Agrarian Law as a Concept to Attain Social Justice." *Pandecta Research Law Journal* 17, no. 1 (2022): 160.

³⁸ Zhu, Jieming, and Hendricus Andy Simarmata. "Formal land rights versus informal land rights: Governance for sustainable urbanization in the Jakarta metropolitan region, Indonesia." *Land use policy* 43 (2015): 67.

³⁹ Setiyowati, Setiyowati, Edy Lisdiyono, and Noor Wachida. "The Role of Land Titles Registrar in the Imposition of Taxes on Acquisition of Rights on Inherited Land and Buildings According to Islamic Law." *Lex Publica* 6, no. 2 (2019): 46.

relies on land as a crucial economic resource.⁴⁰ Striking a delicate equilibrium between these competing demands is paramount for the government. Failure to do so may lead to a range of problems, including land conflicts, land grabbing, and an uneven distribution of land ownership. Such issues can have profound implications for a country's social and economic stability. The government bears the responsibility of formulating and implementing sound policies and regulations to ensure equitable access to land and its resources. Furthermore, empowering communities and individuals to have a say in land-related decisions is crucial for overcoming challenges in the land sector and fostering sustainable development.

Aligning with Zehr⁴¹ perspective that the law is meant to uphold established achievements and, in its evolution, should facilitate societal changes, the government, as a state administrator, must stay attuned to evolving community needs in providing legal protection and certainty in the land sector to mitigate land conflicts. The government's affirmative response is evident in the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 21 of 2020 concerning the Handling and Settlement of Land Cases, aiming to provide legal certainty in implementing land policies.

The Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 16 of 2021 represents a significant refinement of the pre-existing land registration system. This enhancement introduces an electronic registration of records for land title, encompassing binding agreements for the sale and purchase as well as the lease of land rights. Consequently, the rights of parties involved in such agreements will be fortified, ensuring heightened legal protection and certainty. The implementation of land title registration, backed by the state, is designed to maximize protection and legal assurance for land title holders through the registration process.⁴² The registration of rights adheres to the principle of *openbaarheid* (principle of publicity), fostering transparency by allowing public access to information related to land title. While land titles secured through sale and purchase agreements and land lease agreements offer legal certainty and protection through legally binding deeds as per the Civil Code, the absence of registration means non-compliance with the principle of publicity. Essentially, unregistered agreements between parties remain private and confidential, accessible only by mutual consent.⁴³

The assurance of legal certainty to land title holders is integral to fostering a sense of justice within society. This commitment to fairness and equity is intricately linked to the democratic principles in law.⁴⁴ The legal certainty granted to land title holders is expressly addressed in articles of the Basic Agrarian Law (BAL) pertaining to land

⁴⁰ Purnomo, Eko Priyo, Rijal Ramdani, Agustiyara, Queenie Pearl V. Tomaro, and Gatot Supangkat Samidjo. "Land ownership transformation before and after forest fires in Indonesian palm oil plantation areas." *Journal of Land Use Science* 14, no. 1 (2019): 43.

⁴¹ Zehr, Howard. *The little book of restorative justice: Revised and updated*. New York: Simon and Schuster, 2015.

⁴² Danu, Corina Ealen Meilan, Ketut Brihiawati Permanasari, Wilujeng Jauharnani, and Ria Yunita Sari. "The Agrarian Law Policy in the Control of Residence by Expatriates in Indonesia." *Notaire* 3, no. 1 (2020): 31.

⁴³ Yubaidi, Ricco Survival. "The role of land deed official regarding legal certainty of complete systematic land registration." *Jurnal Hukum dan Peradilan* 9, no. 1 (2020): 32.

⁴⁴ Hartanto, J. Andy. "Legal Aspects of Land Purchase." 85.

registration. Articles 23, 32, and 38 of the BAL are directed at the concerned rights holders to provide them with assurance regarding their rights, while Article 19 of the BAL serves as an instruction to the government, urging nationwide adoption of the Rechts Cadastre system in land registration. This recording system aims to deliver legal certainty across Indonesia.

To confer legal certainty upon land title holders, Article 32 of Government Regulation No. 24 of 1997 establishes the certificate's evidentiary strength, affirming it as a robust means of proof according to the Basic Agrarian Law (BAL). This implies that a certificate issued by the BAL functions as compelling and dependable evidence validating the existence and legitimacy of a land right. Such a certificate not only ensures legal certainty for its holder but also shields their land title against challenges or disputes. The assurance of legal certainty is pivotal for encouraging investment and fostering economic growth, instilling confidence in individuals and companies to engage in land-related activities with the knowledge that their land title enjoys legal recognition and protection. Furthermore, it aids in averting conflicts and disputes over land, which can be both financially and temporally burdensome to resolve.

In accordance with Article 32, paragraph (1) of Government Regulation No. 24 of 1997, unless proven otherwise, the physical and juridical data contained in the certificate must be accepted as accurate data, applicable in both routine legal proceedings and court disputes, as long as the data aligns with the details in the measurement letter and the pertinent land book. As stipulated by Article 32, paragraph (2) of Government Regulation No. 24 of 1997, an individual cannot assert ownership over land covered by a certificate on behalf of another person or legal entity. Within a span of 5 (five) years from the certificate's issuance, no lawsuit is filed at the Court, the person who has acquired the land in good faith and exercises physical control, either individually or through another person or legal entity with individual consent, retains lawful possession.

In the context of the land title registration system, there is a collective aspiration for a fully transparent and technologically advanced system that allows easy access to information related to the legitimacy of land titles. This aims to prevent land conflicts, emphasizing the importance of an up-to-date land registration system capable of providing legal protection and certainty for the community as legitimate land title holders. The government is actively working towards the establishment of an advanced land title registration system that will be inclusive and accessible to the public. Leveraging technology, the envisioned system is anticipated to be transparent and user-friendly, enabling individuals to readily access information concerning the legality of land titles. This initiative is essential to mitigate land disputes arising from unclear or improper land title registration. The implementation of an upgraded land registration system ensures that individuals enjoy legal protection and certainty in their rightful ownership of land, representing a crucial stride towards achieving social justice and minimizing societal conflicts. When registering a land title acquired through a sale and purchase agreement or a land lease agreement, it should be treated as an agreement documented in the form of an authentic deed. This recognition underscores a significant distinction between an authentic deed and a private deed, especially in terms of their validity and admissibility as evidence in the event of a dispute. This approach aims to fortify the legal standing of the involved parties, thereby enhancing their legal certainty and protection.

4. CONCLUSION

The land title registration system in the Indonesian agrarian legal framework, following the issuance of Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 16 of 2021, adheres to the principles outlined in Government Regulation Number 24 of 1997 and Government Regulation of the Republic of Indonesia Number 18 of 2021. This system operates as a negative system with positive attributes, incorporating a land title registration mechanism that generates letters serving as robust proof of rights, as outlined in Article 19, paragraph (2) letter c, Article 23, paragraph (2), Article 32, paragraph (2), and Article 38, paragraph (2) of the Basic Agrarian Law (BAL). With the introduction of electronic land title registration, as mandated by the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 16 of 2021, the land sector services undergo modernization, ensuring legal certainty and protection for legitimate land title holders.

The electronic land title registration system enhances protection and legal certainty for parties engaged in binding agreements for the sale and purchase and lease of land title. Prior to the enactment of Government Regulation of the Republic of Indonesia, Number 18 of 2021, executed in line with the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 16 of 2021, land title acquisition based on these binding agreements could not be registered at the National Land Agency office. The electronic registration of land title, which encompasses these binding agreements, ensures heightened protection and legal certainty. This registration process involves the state, ensuring its active role in maximizing protection and guaranteeing legal certainty for land title holders through comprehensive record-keeping.

By registering the rights electronically, the principle of *openbaarheid* (principle of publicity) is implemented, emphasizing openness to the public, thereby allowing everyone access to information related to land title. While land titles obtained through sale and purchase or lease agreements offer legal certainty and protection through a deed governed by the law of engagement, as stipulated in the Civil Code, their non-registration leads to non-compliance with the principle of publicity. In essence, agreements made by the involved parties remain private and confidential, known to the public only if the parties willingly disclose them, as there is no mandatory obligation to register the record. The registration of the recording is solely at the discretion of the concerned parties in the sale and purchase or lease agreements for land title.

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