

## Legal Protection for Land Rights Owners in the Name Change Process Following the Burning Down of the Brebes District Land Office

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**Abstract.** *The fire incident resulted in the destruction of land documents. As happened at the Brebes BPN Office, the fire disaster caused damage to the 2023 Complete Systematic Land Registration (PTSL) certificate which was ready to be submitted, approximately 6000 files were being worked on. The impact of the fire at the Brebes BPN Office will cause land services to be hampered and the escalation of land conflict disputes to increase. The purpose of this study was to determine the legal protection for land rights owners in the name change process after the Brebes Regency Land Office burned down and the efforts of the land office for land rights owners. This research is an empirical research. In terms of the type of data, the research approach used in this study is a qualitative approach. This study uses primary data types and sources supported by secondary data. The data analysis technique used in this study is a qualitative descriptive method. The results of the study stated that legal protection for landowners after the Brebes Land Office fire involved the restoration of certificates and land books by the BPN based on Perkaban Number 6 of 2010. The name change process can be assisted by a legal expert or notary, with the landowner including important documents and coordinating with related parties. The Brebes Land Office carried out land certificate data recovery after the fire, although the negative land registration system has weaknesses. Recovery follows the Head of Agency Regulation Number 6 of 2010 concerning disaster management and the return of community rights to land assets in disaster areas.*

**Keywords:** Land; Protection; Rights.

### 1. Introduction

People who are aware of the importance of land rights will immediately register their land. The importance of a certificate as proof of ownership depends on the

public perception or the legal awareness of the public that encourages them to immediately register their rights at the local Land Office.

The community has the goal of obtaining evidence of land rights in the form of certificates because they want to obtain a guarantee of legal certainty and legal protection for the land they own or control. In relation to this, legal protection can only be obtained after the land is registered. Social reality is what is felt, what is seen, what is heard from others, and what the community expects about the goal of obtaining evidence of land rights in the form of certificates is to obtain a guarantee of legal certainty and legal protection for the land they own or control. In relation to this, legal protection can only be obtained after the land is registered.<sup>1</sup> This means that legal protection will be given after obtaining legal certainty regarding the area, location, boundaries, status of rights and the documents used as the basis for rights or the basis for registration can prove that the certificate was legally issued by the BPN.

The fire incident resulted in the destruction of land documents. As happened at the Brebes BPN Office, a fire disaster occurred on Friday, July 14, 2023 in the early hours of the morning which caused damage to the main building (service counter, section rooms 1 and 2, Land Book (BT) archive room, Land Book (BT) documents, Complete Systematic Land Registration Certificates (PTSL) 2023 which are ready to be submitted approximately 6000 files that are being worked on, as well as *Warkah* PTSL 2022 and PTSL files 2023.

*Warkah* is an archive that is bound or sealed containing a collection of documents in the form of letters that are used as evidence regarding physical data, legal data, and administrative data of land plots, legal grounds, which are used as the basis for registering land rights, including land certificates issued from the Dutch East Indies era until after the independence of the Republic of Indonesia, such as eigendom deeds, girik letters, sale and purchase seals, as well as land certificates issued after 1960, such as inheritance deeds, sale and purchase deeds, deeds of release of rights, deeds that are used as the basis for control and ownership of land, location permits, and others. the following other documents in the form of general land registration lists that explain the physical data and legal data of a plot of land (regarding who the rights holder is, what the rights status is, what rights are encumbering it), in the form of maps, measurement letters, land books, measurement drawings (containing field measurement data: measurement data, azimuth, location, area calculations, land plot boundaries, can be used to reconstruct the area, location and boundaries of the land plot), a list of names explaining the control and ownership of a person's land, which has been registered through the land registration process, which is

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<sup>1</sup>Muchsan, 2000, Land Law in Indonesia in the Context of the Implementation of Regional Autonomy, Paper presented at the Land Seminar, Yogyakarta, p.138.

stored in the Archives building of the Brebes Regency Land Office, approximately 6000 files were destroyed.

The loss of archives and working documents is a land disaster. Land documents from the Dutch East Indies era until May 26, 2009 were destroyed, resulting in the cessation of land services and there were several new facts after the fire. The impact of the fire at the Brebes BPN Office will cause land services to be hampered and escalation of land conflict disputes will increase, so it is hoped that the Brebes BPN Office will immediately resolve the problem of these files in order to protect land rights holders.

Several land rights holders who are in the process of changing their names after the land office burned down suffered the consequences of the land office burning down in Brebes Regency because the original land rights holders' certificates had been received by the Land Office. However, the land rights holders only hold photocopies of the certificates. In fact, photocopies of certificates do not have legal force as evidence. This was stated by Yahya Harahap that in jurisprudence a photocopy is not evidence if the original cannot be shown, so even if the photocopy of the land certificate is legalized but the original land certificate cannot be shown, the photocopy cannot be used as evidence.<sup>2</sup>

Meanwhile, the certificate resulting from data recovery based on Article 18 of Perkaban 6 of 2010 applies, on the contrary, the land book is photocopied from the certificate, the data from the land book is obtained from the certificate which is photocopied and then made or validated as a land book. Meanwhile, according to Government Regulation 10 of 1961 concerning Land Registration, a certificate is a copy of a land book whose data is copied from the land book. In addition, according to Government Regulation 24 of 1997, a certificate will be a strong evidence if the physical data and legal data are in accordance with the data/archives at the Land Office (archives), while the certificate is the result of data recovery based on Article 18 of Perkaban 6 of 2010 Regarding Disaster Management and the Return of Community Rights to Land Assets in Disaster Areas, the physical data and legal data of the land book are made from a photocopy of the certificate held by the applicant, the opposite occurs, it is not the certificate that must be adjusted to the Land Office archives, but the land book (archive) that adjusted to the certificate.

Reported from metro7.co.id, the people of Brebes Regency are urged to cooperate with the Land Office by assisting in data recovery efforts by bringing a Data Recovery Application Letter whose form has been provided, bringing a

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<sup>2</sup>Yahya Harahap, 2005, Civil Procedure Law Regarding Lawsuits, Trials, Confiscation, Evidence, and Court Decisions, Sinar Grafika, Jakarta, p. 622

photocopy of the applicant's ID card and power of attorney if authorized, a statement of physical control of the land, land history, photocopy of certificates and/or other documents such as sales and purchase letters, inheritance, grants. In this case, it is clear that the Brebes Regency Land Office is trying to restore community data after the Brebes Land Office burned down.<sup>3</sup>

Based on the description above, the researcher is interested in conducting further research on Legal Protection for Land Rights Owners in the Name Change Process after the Brebes Regency Land Office Burned Down.

## 2. Research Methods

This research is an empirical research, which conceptualizes law as behavior so that what is studied is how law works in society. Empirical research works to find the right answer by proving the truth sought in or from facts in the community environment that have legal meaning.<sup>4</sup> Judging from the type of data, the research approach used in this study is a qualitative approach. What is meant by qualitative research is research that intends to understand the phenomenon of what is experienced by the research subject holistically, and by means of description in the form of words and language, in a specific natural context and by utilizing various scientific methods.<sup>5</sup> This study uses primary data types and sources supported by secondary data. Data collection techniques used in this study are interviews and literature studies. Data analysis techniques used in this study are qualitative descriptive methods.

## 3. Results and Discussion

### 3.1. Legal Protection for Land Rights Owners in the Name Change Process Following the Burning Down of the Brebes District Land Office

The fire incident on Friday, July 14, 2023 destroyed the Brebes Regency Land Office, documents, general lists, name lists, stored in the building, were destroyed by fire. The documents were in the form of letters that were used as evidence regarding physical data, legal data, and administrative data of land plots, legal grounds, which were used as the basis for registering land plots, including land documents such as eigendom deeds, girik letters, sale and purchase seals, as well as land documents such as inheritance deeds, sale and purchase deeds, release of rights deeds, deeds that were used as the basis for

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<sup>3</sup> <https://metro7.co.id/nasional/jawa-tengah/brebes/pulihkan-arsip-hak-aset-tanah-pasca-gedung-atr-bpn-terbakar-community-diminta-segera-lapor/2023/> accessed on January 8, 2024.

<sup>4</sup> Soetandyo Wignjosoebroto, 2016, Law in Society Development and Problems, Bayumedia Publishing, Malang, p. 121.

<sup>5</sup> LJ Moleong, 2017. Qualitative Research Methods. PT. Remaja. Rosdakarya, Bandung, p. 27.

control and ownership of land, location permits, and others. along with other documents in the form of general land registration lists that explain the physical data and legal data of a plot of land (regarding who the rights holder is, what the rights status is, what rights are encumbering it), in the form of maps, measurement letters, land books, measurement drawings (containing field measurement data: measurement data, azimuth, location, area calculations, land plot boundaries, can be used to reconstruct the area, location and boundaries of the land plot), a list of names explaining the control and ownership of a person's land, which has been registered through the land registration process or name change, which is stored at the Brebes Regency Land Office, as many as ± 6 thousand documents were destroyed.

Guarantee of certainty and legal protection for land rights owners after the fire, if the land rights holder still experiences disturbances, especially if the land rights are declared null and void by a court decision or have no legal force, then the certificate as evidence of land control and ownership rights can be said to be meaningless. However, the loss of archives causes no legal certainty, certainty about where it is located, its area, and its boundaries, what its rights are and who the owner is because the data is stored in the archives.<sup>6</sup>Certainty regarding the status of the rights, the subject, the rights that burden it, the basis for the rights registration is stored in a document or archive.

Land documents containing traces of the land registration process until the issuance of the certificate which is authentic evidence of the birth of Land Rights. The documents in Article 1 of Government Regulation Number 24 of 1997 concerning Land Registration are: land books, measurement letters, registration maps or land plot maps, deed lists, and other general lists, are Land Archives that must be maintained continuously, continuously, and regularly. The provisions of Article 36 of Government Regulation Number 24 of 1997 concerning Land Registration require registration of every change in land registration data, both physical and legal, in order to obtain up-to-date land registration data in accordance with the principles of land registration as stated in Article 2 of Government Regulation Number 24 of 1997 concerning Land Registration which states that land registration is carried out based on the principles of simplicity, safety, affordability, up-to-date and openness. Land documents are authentic evidence. It is said to be authentic because it is made through the land registration process regulated in Article 19 of Law Number 5 of 1960 concerning Basic Agrarian Principles.

In addition, in making the certificate, it fulfills the requirements for an authentic deed as regulated in Article 1868 of the Civil Code which states that "an authentic

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<sup>6</sup>AP. Parlindungan, 1994, Land Registration in Indonesia, Mandar Maju, Bandung, p. 13

deed is a deed made in a form determined by law by or before a public official who is authorized to do so at the place where the deed is made."

Documents containing administrative data, physical data, and legal data as mentioned above which are stored at the Land Office in Article 1 number 2 of the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number: 6 of 2010 concerning Disaster Management and Return of Community Rights to Land Assets in Disaster Areas referred to as land archives are records of activities or events in various forms of media in accordance with the development of information and communication technology which are made and received by the National Land Agency of the Republic of Indonesia.

Non-natural events such as the fire at the Brebes Regency Land Office Building on July 14, 2023, which destroyed land archives. By Article 1 of the Regulation of the Head of BPN Number 6 of 2010, it is declared a disaster in the land sector because land archives containing records of the results of land registration activities up to the birth of Land Rights have a significant impact on legal certainty for Rights holders listed in their Land Rights certificates.

Brebes Land Office Officers also stated in interviews that adjustments in procedures refer to the Regulation of the Head of the National Land Agency Number 6 of 2010 concerning Disaster Management and Return of Community Rights to Land Assets in Disaster Areas. Everything has been covered by the law, there is no other law that regulates this matter.<sup>7</sup>

In addition to the Brebes Regency Land Office which also plays an important role in protecting land rights owners in the process of changing names, PPAT also plays an important role in this matter. After finding out information about the burning of the Brebes Regency Land Office, the Notary/PPAT immediately communicated to the client informing that there was a fire at the Land Office and explaining one by one from the client how far the process had come. Making a certificate does not have the original certificate document, only forms signed by the village. In making this certificate, the risk is not too great. However, in the transfer of rights, there is an original SHM (Certificate of Ownership), we immediately contact the client to inform them that there will be a process of issuing a replacement certificate. So it is still safe even though the files are burned and the land book is no longer there. The Land Office has an online database as a basis.<sup>8</sup>

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<sup>7</sup>Interview conducted with Brebes Regency Land Office Officers on January 11, 2023.

<sup>8</sup>Interview conducted with Nur Suprihatiningsih, SH, M.Kn as Notary/PPAT of Brebes Regency on January 13, 2024.

Thus it can be said that the Land Title Certificate will be able to provide legal certainty and legal protection as strong evidence if the physical data, legal data, and administrative data are in accordance with the measurement letter and land book at the Land Office and supported by the documents stored in the documents and general list above. As stated in Article 19 paragraph 2 letter c, Article 23. 32, and 38 of the UUPA in conjunction with Article 32 paragraph 1 PP 24 of 1997, the certificate is a strong evidence of both the subject and object of land rights, as long as the physical data and legal data are in accordance with the data in the measurement letter and land book concerned.

Following the fire at the Brebes District Land Office, land rights owners need to take certain steps to protect their rights. The legal process for changing the name of the land can be done by contacting a legal expert or notary/PPAT to get help and guidance in dealing with this situation. Land rights owners need to include the necessary documents, such as proof of land ownership and identity, in the application for change of name to the land office. Coordination with related parties, including the local government, is also important to ensure that the recovery and name change process runs smoothly in accordance with local regulations.

In addition, reviewed from Hadjon's theory which classifies two forms of legal protection for the community based on the means, namely preventive and repressive protection, then in legal protection to protect land rights owners in the name change process after the Brebes Regency Land Office burned down, among others:

#### 1. Preventive protection

In this case, preventive legal protection is carried out for the Land Office to start implementing electronic land certificates. The implementation of electronic land certificate technology can help prevent the loss of important information and documents in a fire. Data stored electronically can be accessed again after the incident. In addition, a security audit of the Land Office is carried out. Preventive efforts can include a security audit of the land office to ensure an effective security system, including protection of important documents related to land ownership.

#### 2. Repressive protection

Repressive protection in protecting land rights owners in the process of changing the name after the land office burned down can be done by restoring documents. Repressive law can focus on restoring documents that are lost or damaged by fire. Legal steps can be taken to ensure that the necessary data and information can be returned or recovered. In addition, in the process of changing



the name, other alternative evidence can be used. If the original documents required for the land name change process cannot be found, the landowner can be asked to provide alternative evidence such as witnesses or other documentation that can be legally recognized.

### **3.2. Defense Office Efforts Against Land Rights Owners in the Process of Changing Names After the Burning of the Brebes Regency Land Office**

With the fire incident at the Brebes District Land Office which destroyed approximately 6,000 (six thousand) land archives, the aim of land registration or the name change process was not achieved, namely to provide a guarantee of legal certainty and legal protection as referred to in Article 19 paragraph (2) letter c of the UUPA in conjunction with Article 3, Article 4, and Article 32 of PP 24 of 1997, so that we return to the starting point, even though there is a certificate, the legal certainty regarding the object and subject and the status of the land area whose archives were destroyed is unclear, when the legal uncertainty regarding the subject, object, or status is lost, the BPN will not provide a guarantee of legal protection.

In response to this problem, the efforts made by the land office are to withdraw all land rights certificates in the community or elsewhere to restore their data. As is known, in the negative system of land registration without being accompanied by a legal instrument for reinforcement, it still contains weaknesses, so that the certainty of legal protection obtained is still relative. This situation shows that the current land registration system has not provided a guarantee of legal protection of land rights effectively, this condition is further weakened by the loss or destruction of archives. Where in the negative system of land registration, archives containing authentic deeds (rights base, evidence of acquisition, evidence of physical control, deeds of sale and purchase, notary deeds, and others) are still needed when there is a dispute, conflict, land case.

Brebes District Land Office is recovering land registration data. Data recovery Post-fire land registration carried out by the Brebes District Land Office refers to the provisions of the Head of Agency Regulation Number 6 of 2010 concerning Disaster Management and Return of Community Rights to Land Assets in Disaster Areas. And in its implementation there are 2 (two) activities, namely the recovery of land registration data financed by the APBN funding project and data recovery, which is based on the policy of the Head of the Land Office. The problems that arose due to the destruction of land archives after the fire at the Brebes District Land Office generally caused problems from a legal, social and administrative perspective. In the implementation of data recovery, many problems that occur in the field are that it is not possible to ascertain the



number of lost land certificates so that they only rely on certificate data held by the applicant.<sup>9</sup>

Legal certainty can only be answered normatively, the rules of the game regarding certainty and legal protection of land ownership and control are normatively contained in Article 19 paragraph (2) letter c UUPA in conjunction with Article 3, Article 4, and Article 32 PP 24 of 1997 which stipulates that the purpose of land registration is to provide legal certainty and protection. The problem is the implementation of land archive recovery seen from the legal, social and economic aspects, many problems occur because it only relies on certificate data owned by the applicant, reference data collection. Article 18 of Perkaban 6 of 2010 cannot always be implemented. Other obstacles cannot be implemented because there are requirements that must be completed, namely a statement of no dispute. The statement of no dispute according to PP 24 is only required for the first certificate application and if there are changes related to changes in physical data and legal data, thus causing legal uncertainty, as well as the inconsistency of the Perkaban with higher land registration regulations (UUPA and government regulations).

The implementation of the data recovery is to restore the power of the land title certificate to return to its original state, physical data, legal data, and administrative data. so that in terms of legal formal administration of the land title certificate it is worthy of being given legal protection guarantees to the land title holder after the fire.

#### **4. Conclusion**

Legal protection for land rights owners in the process of changing the name after the Brebes Regency Land Office burned down is to provide legal protection for land rights certificates whose archives have been restored, the purpose of data recovery is to provide legal protection for land rights whose archives have been destroyed. The BPN carries out data recovery and re-validates the certificates and land books and their measurement letters based on Article 18 of Perkaban Number 6 of 2010. The legal process for changing the name of the land can be carried out by contacting a legal expert or notary/PPAT to get help and guidance in dealing with a situation where the Land Office burned down and destroyed the land rights owner's documents. Land rights owners need to include the necessary documents, such as proof of land ownership and identity, in the application for change of name to the land office. Coordination with related parties, including the local government, is also important to ensure that the recovery and change

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<sup>9</sup>Fajar Kemal Gustaman, 2014, Post-Fire Disaster Land Registration Data Recovery at the Cianjur District Land Office; [http://www.perpustakaan-stpn.ac.id/opac/?p=show\\_detail&id=7992](http://www.perpustakaan-stpn.ac.id/opac/?p=show_detail&id=7992), STPN Library, Yogyakarta, p. 28.

of name process runs smoothly in accordance with local regulations. The defense office's efforts towards land rights owners in the process of changing names after the Brebes District Land Office burned down were to withdraw all land rights certificates in the community or elsewhere to restore their data. As is known, in the negative land registration system without being accompanied by a legal instrument to strengthen it, it still contains weaknesses, so that the certainty of legal protection obtained is still relative. The Brebes District Land Office is restoring land registration data. The restoration of land registration data after the fire carried out by the Brebes District Land Office refers to the provisions of the Head of Agency Regulation Number 6 of 2010 concerning Disaster Management and the Return of Community Rights to Land Assets in Disaster Areas.

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