

Implementation of Legal Certainty Values in the Process of Increasing Land Rights in Demak Regency

Prasetyo Adi Nugroho

Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail:
Prasetyoadinugroho.std@unissula.ac.id

Abstract. *Background of the study is In the context of improving land status in Indonesia, the implementation of legal certainty is an important issue that needs serious attention. Demak Regency as one of the regions in Indonesia also faces challenges in terms of improving land status which requires clear legal certainty. Land rights issues, land conflicts, and investment and development are the main focus in this context. Improving land status from Building Use Rights to Ownership Rights or other status changes requires a structured and transparent legal process. In this case, a study of the implementation of legal certainty related to improving land status in Demak Regency can provide a clear picture of the challenges, obstacles, and solutions that can be implemented to increase the effectiveness of the legal system in this case. The research method used by the author in this study is Empirical Research with a qualitative approach, using primary data and secondary data, data collection methods are carried out by interviews and observations, from the data collected will be analyzed using descriptive methods. The results of the study are the Regulation of the Minister of ATR/BPN Number 1339 of 2022 as the latest legal basis that strengthens the process of improving the status of Building Use Rights (HGB) to Ownership Rights (HM) in Demak Regency. This regulation complements regulations such as UUPA No. 5 of 1960, PP No. 24 of 1997, Regulation of the Minister of State for Agrarian Affairs/Head of BPN No. 3 of 1997, PP No. 46 of 2002, and Circular Letter of the Head of BPN-600-1900 dated July 31, 2003, and provide convenience for the community in the process of improving land status. The case of Mr. Budi and Mrs. Siti is a real example of the successful implementation of this regulation, although there were several obstacles such as completeness of files and understanding of procedures. The efforts of BPN Demak in socialization, improving services, and handling special cases also contributed to the smooth running of this process. Overall, this regulation provides legal certainty, benefits, and justice for the community in realizing stronger land ownership.*

Keywords: *Improving; Land; Rights; Status.*

1. Introduction

In the context of current National Development, Land issues receive special attention from various parties. In this regard, acceleration in National Development greatly requires support for a guarantee of legal certainty of land rights.¹As mandated by the 1945 Constitution of the Republic of Indonesia in Article 33 Paragraph (3) which states "The land, water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people". The provisions of this article outline basic policies regarding the control and use of existing natural resources.²

Land is one of the main capital for the Indonesian nation and a main element in development towards the formation of a just and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia. In the explanation of the 1945 Constitution of the Republic of Indonesia, it is expressly stated that the State of Indonesia is based on law (Rechtsstaat), not based on mere power (Machtstaat), this is emphasized in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, third amendment (3), which reads: "The State of Indonesia is a state based on law".

One of the principles of a state of law is the guarantee of legal certainty, legal order and legal protection, which contains the values of truth and justice, by providing guarantees and protection for the rights of citizens. As a provision of the Constitution, what is stated in the 1945 Constitution of the Republic of Indonesia, in addition to having a very high and very fundamental legal position, also has philosophical and political values in the life of the nation and state. All policies of state administrators in the fields of economics and land including all branches of production and management of the earth, water and all natural resources contained therein must not deviate from the provisions of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia.³

The concept of a state based on law uphold high guarantee of legal certainty, legal order, and legal protection have significant implications in the land sector. Article 33 paragraph (3) of the 1945 Constitution emphasizes that the earth, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. Therefore, policies in the land sector, including improving the status of land rights, must be in line with these constitutional principles.

Regulation of the Minister of ATR/BPN Number 1339 of 2022 concerning the Granting of Land Rights in General, which is in line with Article 21 of the UUPA concerning Building Use Rights, becomes an instrument important in realizing legal certainty in the land sector. This regulation provides a clear legal basis and transparent procedures for the community, especially in Demak Regency, to

¹Arba, M. (2021). Indonesian Agrarian Law. Sinar Grafika. Jakarta, p. 3.

²Boedi Harsono, 2015, Indonesian Agrarian Law-History of the Formation of the Basic Agrarian Law, Contents and Implementation, Volume I, Djambatan Jakarta, p. 96.

³ Ashar, AT (2024). Utilization of Land Title Certificates After Asset Legalization in Transmigrant Communities for Business Development in Sridadi Village, Buay Madang District, East Ogan Komering Ulu Regency (Doctoral dissertation, National Land College).

improve the status of their land rights. Thus, this regulation not only provides legal guarantees and protection for land owners, but also contributes to the realization of social justice and people's prosperity through optimal land utilization.

The implementation of legal certainty of increasing land status plays a very important role, especially in areas such as Demak Regency. This urgency can be described in several aspects:⁴

- 1) First, in terms of land rights. Legal certainty is crucial to ensure who has the rights to a plot of land. This will help prevent various conflicts and land disputes that may occur in the future.
- 2) Second, in the context of development and investment, legal certainty is a fundamental element. Investors and developers need assurance that they have the legal right to use the land before they make large-scale investments. Without legal certainty, it will be difficult for them to plan and implement their projects.
- 3) Third, improving land status also plays an important role in environmental protection. For example, land whose status is upgraded to a forest area will receive protection from various development activities that can damage the environment.
- 4) Fourth, upgrading land status can contribute to strengthening the local economy. For example, land upgraded to agricultural land status can help ensure that the land is used for agricultural activities, which can create jobs and boost the local economy.

Improving land status and issuing Land Rights Certificates (SHAT) are closely related and both are important parts of implementing legal certainty in Indonesia, including in Demak Regency.

Based on the Author's interview with Notary Teguh Nugroho, SH, M.Kn in Demak Regency, there are several cases related to Land Rights Status as follows:⁵

- 1) Case 1 ,In 2022, Mr. Budi, a resident of Karanganyar Village, Mranggen District, Demak Regency, applied for an increase in land status from Building Use Rights to Ownership Rights. Mr. Budi has had Building Use Rights for 300 square meters of land since 2000. The land is used as a residence for him and his family. Mr. Budi's application process went smoothly and was completed in less than 6 months. In December 2022, Mr. Budi received a certificate of Ownership Rights for the land.
- 2) Case 2 ,In 2023, Mrs. Siti, a resident of Wonosalam Village, Mranggen District, Demak Regency, applied for an increase in land status from Building Use Rights to Ownership Rights. Mrs. Siti has had Building Use Rights for 500 square meters of land since 2010. The land is used for a food stall business. Mrs. Siti's application process encountered obstacles because the land was

⁴ Muhammad Sadi. (2021). Government Law: In the Perspective of Positive Law and Islamic Law. Prenada Media. Pg. 134.

⁵Interview with Notary Teguh Nugroho, SH, M.Kn in Demak Regency on January 29, 2024.

located in a roadside area. Mrs. Siti had to take care of the permit first from the Public Works and Spatial Planning Service of Demak Regency. After the permit was completed, Mrs. Siti's application process was continued at the Demak Regency Land Office. Mrs. Siti's application process was completed in less than 1 year. In November 2023, Mrs. Siti received a certificate of Ownership Rights for the land.

From both cases, it can be seen that the process of implementing legal certainty for improving land status in Demak Regency is going well. However, there are several obstacles that can hinder the process, such as land being in a roadside area or land having a lost Land Ownership Certificate.

A Land Title Certificate is a legal document issued by the government that shows that a person or legal entity has rights to a plot of land. This certificate provides legal certainty to land title holders and protects them from claims or disputes that may arise in the future.⁶ The process of issuing Land Title Certificates often involves upgrading the status of the land. For example, before land can be certified as freehold, the land must be upgraded from state land or communal land. Thus, upgrading the status of land and issuing Land Title Certificates are two interrelated legal aspects and both are important to achieve legal certainty in land matters. Both help prevent land disputes, protect the rights of landowners, and encourage investment and development.⁷

Land Title Certificates are very important for the community because they are strong evidence of land ownership. Proof of land ownership is strong evidence of the status of the land owned and will guarantee legal certainty for the land owner, so that if at some point the land is transferred, or will be sold again, then the second party feels confident that there will be no disputes in the future and will facilitate the process of selling and reversing the name of ownership as stated in Article 19 paragraph (2) letter c of the Basic Agrarian Law where land registration includes the provision of valid proof of rights letters as strong proof.⁸

Legal certainty of land status improvement is important to realize justice and welfare for the community. This legal certainty can be realized with a clear and firm legal basis. When linked to the legal basis for increasing land status, it can also be found in the Al-Qur'an and Hadith. In the Qur'an, there are several verses that mention land ownership, such as:

a) QS Al-Baqarah verse 288:

"And Allah has permitted trading and forbidden usury." This verse shows that buying and selling land is permissible in Islam.

b) QS Al-An'am verse 165:

⁶Haraif Yudha Putra. 2021 "Legal Certainty of Increasing the Status of Land Rights Encumbered with Mortgage Rights from Building Use Rights to Ownership Rights (Study at the Solok City Land Office)." *Unes Journal Of Swara Justisia*. Volume 5, Issue 2. Pg. 112.

⁷ Ramadhan, R. (2020). The Role of Politics in the Development of National Agrarian Law. *SOSEK: Journal of Social and Economics*,

⁸Unnisula Repository CHAPTER I, available at <http://repository.unissula.ac.id/15603/7/Bab%20I.pdf> accessed on November 27, 2023.

"And it is He who made the earth for you as a resting place and the sky as a canopy, and sent down water from the sky and brought out thereby fruits as a provision for you. Therefore do not set up rivals to Allah while you know." This verse shows that Allah has made the earth as a place of residence for humans, including for building houses and other dwellings.

In the Hadith, there are several hadiths that mention land ownership, such as:

a) Hadith narrated by Bukhari:

"From Abu Hurairah, the Messenger of Allah shallallahu 'alaihi wa sallam said, 'There is no sale except with *ijab* and *qabul*.'" This hadith shows that the sale and purchase of land must be carried out with valid *ijab* and *qabul*.

b) Hadith narrated by Muslim:

"From Ibn Umar, the Messenger of Allah shallallahu 'alaihi wa sallam said, 'Whoever buys land, then he finds a date palm tree in it, then the date palm tree is his.'" This hadith shows that the date palm tree that grows on the purchased land becomes the property of the buyer.

From the legal basis, it can be concluded that legal certainty of land status improvement is important and recommended in Islam. This legal certainty can realize justice and welfare for the community, as well as provide legal certainty for land owners. Therefore, the process of improving land status must be carried out carefully and fairly. It is important to ensure that the rights of all parties, especially local communities, are respected and protected in this process. This is because in the author's observation there is a legal gap in the practice of implementing legal certainty for improving land status, especially in Demak Regency, which is a fairly complex issue. One of the main factors is that many people do not ensure that their rights are fulfilled. The other factors are:⁹

- 1) First, there is a gap between law and practice that often occurs. Although the law may be clear, in practice, its implementation is often inconsistent. For example, the process of improving land status may have been regulated by law, but in reality, this process is often not in accordance with existing regulations.
- 2) Second, gaps in people's knowledge and understanding of the law are also important factors. Many people do not fully understand their rights or the legal processes related to improving land status. This can result in them being unable to defend their rights or take advantage of existing opportunities.
- 3) Third, disparities in access to the law are also a problem. Not everyone has equal access to the legal system. For example, those living in rural or underprivileged areas often do not have the same access to lawyers or courts as those living in urban or more affluent areas.
- 4) Fourth, there is a gap in law enforcement. Even if laws exist and people know their rights, they must be enforced. If law enforcement is inconsistent, this can create gaps.

In relation to this, considering the importance of legal certainty for improving the

⁹The Celebration,. (2010). Guide to Managing Land Certificates. VisiMedia. Pg. 93.

status of Land Rights because by holding land registration, it will bring legal consequences, namely the granting of a letter of proof of land rights called a land certificate to the holder of the land rights concerned which serves as a strong means of proof.

2. Research Methods

This study uses an empirical legal research method with a qualitative approach to examine the implementation of legal certainty values in the process of increasing land rights in Demak Regency. The data collected consists of primary and secondary data.

Primary data were obtained through interviews with notaries and officials of the Demak Regency Land Office. Secondary data were obtained from primary legal materials, such as the 1945 Constitution, the Basic Agrarian Law, and other related regulations, as well as secondary and tertiary legal materials in the form of literature, journals, and the views of legal experts.

Data collection was carried out through interviews and observations, while data analysis used descriptive methods to provide a comprehensive picture of the implementation of legal certainty values in improving land rights in Demak Regency.

3. Results and Discussion

3.1 The implementation of registration for increasing land status in Demak Regency which is not in accordance with Legal Certainty

The land registration system adopted in Indonesia, as is essentially the caseset in Basic Agrarian Law, namely a negative system, but one that contains positive elements, because it will produce proof of rights letters that are valid as strong evidence. As stated in Article 19 paragraph (2) letter c, Article 23 paragraph (2), Article 32 paragraph (2) and Article 38 paragraph (2) Basic Agrarian Law, so it can be concluded that the system in Indonesia is not a pure negative system but rather a negative system that contains positive elements.¹⁰ In a positive system, the person who registers as the holder of land rights cannot be challenged anymore. The state as the registrant guarantees that the registration that has been done is correct. The consequence of using this system is that in the registration process, it must be carefully examined that the person who submitted the registration is indeed entitled to the land that is registered.¹¹

Land registration activities are based on Article 19 paragraph 2 Basic Agrarian Law, which is further explained in Article 11 of Government Regulation Number 24 of 1997 concerning Land Registration, which states that the implementation of land registration is carried out by the National Land Agency, including the activities of initial land registration and maintenance of land registration data. The activities of initial land registration are carried out through systematic land registration and

¹⁰Fitri Widayanti, 2015, Land Registration Publication System According to Law Number 5 of 1960 Concerning Basic Agrarian Principles (UUPA), Thesis, Faculty of Law, Airlangga University, p. 30.

¹¹Rohiman, 2007, Systematic Land Registration Process Through Adjudication in Seberang Ulu I District, Palembang City Based on PP 24 of 1997 Concerning Land Registration, Thesis, Faculty of Law, Diponegoro University, p. 15.

sporadic land registration. Article 21 of the UUPA regulates building use rights (HGB) on state land. HGB is the right to build and own buildings on land that is not one's own, with a maximum period of 30 years and can be extended.

According to Article 1 Number 10 of Government Regulation Number 24 of 1997 concerning Land Registration, the form of implementation of systematic land registration activities is carried out simultaneously covering all land registration objects that have not been registered in the area or part of a village/sub-district. Meanwhile, according to Article 1 Number 11 of Government Regulation Number 24 of 1997 concerning Land Registration, the form of implementation of sporadic land registration activities is carried out individually or en masse covering one or several land registration objects that have not been registered in the area or part of a village/sub-district. The difference between systematic land registration and sporadic land registration is that systematic land registration is based on a work plan and is carried out in an area determined by the Minister of Agrarian Affairs, while sporadic land registration is carried out at the request of the interested party. Meanwhile, according to Article 1 Number 12 of Government Regulation Number 24 of 1997 concerning Land Registration, land registration data maintenance activities are adjustments to physical and legal data in registration maps, land lists, name lists, measurement letters, land books, and certificates with changes that occur later.¹²

Then also regulated Ministerial Regulation (Permen) Number 1339 of 2022 is a regulation issued by the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency (ATR/BPN) concerning the Granting of Land Rights in General. This regulation aims to implement the provisions of Article 2 paragraph (4) of the Regulation of the Minister of ATR/Head of BPN Number 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights. Regulation of the Minister of ATR/BPN No. 1339/2022 provides convenience in granting and changing land rights. Ownership Rights can be granted for residential houses, shophouses, office houses, and civil servant residences originating from HGB or Right of Use, with a certain area. This regulation also allows changes in Ownership Rights to HGB or Right of Use, changes in Right of Use to HGB, changes in HGB to Right of Use, and changes in Right of Cultivation (HGU) to HGB or Right of Use with certain requirements. In addition, there are additional provisions regarding the registration of certificates in the name of heirs if the rights holder dies, as well as regulations regarding the requirements and procedures for granting land rights in general.

ATR/BPN Regulation 1339/2022 clarifies the process of upgrading HGB status to Freehold Rights for residential houses, which was previously regulated in Ministerial Decree 6/1998. This regulation no longer limits the area of land that can be applied for as Freehold Rights, unlike Ministerial Decree 6/1998 which limited it to 2000 m². This is in line with Article 21 of the UUPA which does not provide a limit on the area of land for HGB that can be upgraded to Freehold Rights.

¹² La'bi, JMA (2021). Legal Analysis of Complete Systematic Land Registration (Ptsl) for Tongkonan Land in North Toraja Regency (Doctoral Dissertation, Hasanuddin University). P. 74.

The process of upgrading the status at the Demak Regency Land Office involves several stages. First, the applicant submits a written application by attaching documents such as a land certificate, proof of land use for a residence, SPPT, and PBB. After that, a check is carried out on the completeness of the documents and payment at the counter. This stage is in accordance with the principle of Article 21 of the UUPA which requires an application from the HGB holder to upgrade the status to Freehold.

Next, the Head of the Rights and Information Registration Sub-Section (PHI) examines the documents, especially the suitability of the applicant's name. If approved, the documents are forwarded to the Head of the Land Measurement and Registration Section, then to the Head of the Land Office. After receiving approval, bookkeeping is carried out and the new certificate is submitted to the applicant. This entire process reflects the administrative procedures regulated in the implementing regulations of Article 21 of the UUPA.

Land ownership issues in Demak Regency, especially related to the increase in status from Building Use Rights (HGB) to Ownership Rights (HM), are crucial issues that need to be addressed with a comprehensive approach. Social and economic inequality seen from uneven land ownership patterns, as well as the potential for turmoil due to industrialization and development, require a solution that is not only based on legal aspects, but also considers the psychological and social aspects of the community.

In this context, the National Land Agency (BPN) of Demak Regency has an important role in ensuring certainty of land ownership and encouraging the improvement of land status from HGB to HM. This is in line with the principles of human rights that guarantee everyone's property rights and prohibit arbitrary seizure of property. By increasing the status of land to HM, the community will have stronger legal certainty over their property rights, so that it can encourage more optimal land use and contribute to regional economic development.

In addition to the BPN, Notaries also have a crucial role in the process of upgrading land status from HGB to HM, starting from providing counseling and education to applicants, document verification and validation, to making deeds of transfer of rights. They also play a role in coordinating with the Land Office, handling mortgage rights, storing documents, as well as resolving disputes and legal consultations. This role ensures that the process of upgrading land status runs smoothly, in accordance with the law, and protects the interests of all parties involved.

Despite the active role of notaries, the process of increasing land rights in Demak Regency still faces several obstacles. The community often complains about the costs and complicated administrative systems. In addition, from the BPN side, there are obstacles such as complete application files, data inconsistencies, and lack of public knowledge about the process of increasing land rights.

The increase in HGB status to HM has an important value, especially in providing legal certainty and increasing the economic value of the land. SHM provides unlimited ownership, unlike HGB which has a certain validity period. In addition,

SHM also increases the selling value of the land and encourages owners to ensure that their ownership administration is complete and correct.

The low level of submission of HGB status upgrades to HM indicates that the community has not fully felt the benefits or convenience in this process. This can be caused by a lack of information and socialization regarding the procedures and benefits of status upgrades, as well as bureaucratic obstacles and costs that may burden the community. In addition, the large number of people who do not extend their HGB indicates that the land system is not yet fully effective in providing legal certainty and security for landowners. This can be caused by a lack of public awareness of the importance of HGB extensions, or difficulties in the extension process itself.

Thus, the improvement of land rights status is a concrete example of the application of the theory of utility in law, where legal policies are designed and implemented with the aim of creating the greatest benefit for the greatest number of people. Through this approach, law not only functions as a regulatory tool, but also as a catalyst for social and economic progress.

3.2 Kobstacles and efforts to realize legal certainty in the implementation of land status registration in Demak Regency

- 1) The phenomenon of the slow increase in the status of Building Use Rights (HGB) to Ownership Rights (HM) and the low rate of HGB extension in Demak Regency is a complex issue influenced by various factors. Based on the Interview, the factors are as follows:¹³
 - a) Lack of information and public understanding of the procedures and benefits of upgrading HGB status is one of the main causes. Many residents are not yet aware of the convenience offered by Permen ATR/BPN 1339/2022, or are not even aware that their land has HGB status.
 - b) costs associated with the process of upgrading status and extending HGB are also obstacles for some people. Administrative costs, document processing, and potential taxes that arise can be burdensome, especially for people with lower to middle economic levels. Uncertainty about the amount of costs and complicated procedures also make people reluctant to start the process.
 - c) Cultural and social factors also play a role. Some communities still hold traditional beliefs that land is communally owned and does not need to be individually certified. In addition, there are concerns that upgrading the status of HGB to HM will increase the burden of land and building tax (PBB). The lack of socialization and education from the government regarding the benefits and consequences of upgrading the status of HGB further strengthens the reluctance of the community.

¹³Interview with Mr. HERY WIDJAJANTO, SH, MH Coordinator of the Substance Group for the Maintenance of Land Rights, Space and Development of PPAT, Demak Regency Land Office

- d) Limited access to land services is also an obstacle. The long distance between villages in Demak and the Land Office, as well as the lack of information about online land services, makes it difficult for people to access the information and services they need. Moreover, for people who have limited digital literacy, the online application process is a challenge in itself. In addition, the bureaucracy that is still considered complicated and convoluted by some people is also an inhibiting factor. Although the government has tried to simplify the procedures, the public's perception of the land bureaucracy as slow and less transparent still exists. This makes people feel reluctant and pessimistic about the process of increasing the HGB status.
- e) Limited human resources at the Demak Regency Land Office can also affect the speed and effectiveness of services. The limited number of officers, coupled with the high number of applications received, can cause long queues and time-consuming processes. This can of course reduce public interest in taking care of increasing the HGB status.

BPN Demak's efforts to overcome this include socialization, improving facilities and infrastructure, and solutions for mortgage rights. Socialization aims to improve public understanding and correct wrong perceptions. Improving facilities and infrastructure is done to speed up and simplify the administrative process. Meanwhile, solutions for mortgage rights are in the form of debt repayment or applying for new credit with other guarantees, although burdensome, remain important to ensure legal certainty.

BPN Demak's efforts to improve the status of land rights are in line with Gustav Radbruch's theory of legal certainty. Socialization, infrastructure improvement, and solutions for mortgage rights are steps that ensure positive law, based on facts, are clearly formulated, and are not easily changed. Moreover, this effort also reflects the application of the theory of legal benefits, with the aim of achieving justice, welfare, and legal benefits for the community. BPN Demak plays an active role in increasing public awareness, facilitating the document processing process, and working with various parties to overcome administrative and legal obstacles. This effort shows BPN Demak's commitment to realizing social justice through laws that are beneficial to the entire community.

4. Conclusion

Regulation of the Minister of ATR/BPN No. 1339/2022 is the latest legal basis that strengthens and clarifies the process of upgrading the status of Building Use Rights (HGB) to Ownership Rights (HM) in Demak Regency. This process involves a series of steps that must be followed by the applicant, starting from filling out the application letter to verification by Land Office officials. The slow increase in HGB status to HM and the low rate of HGB extension in Demak are caused by various factors, including lack of information and public understanding, cost constraints, cultural and social factors, limited access to land services, as well as complex bureaucracy and limited resources at the Land Office. BPN Demak has made various efforts to facilitate this process, including socialization to the community, improving facilities and infrastructure, and handling cases of land burdened with

mortgage rights. These efforts are in line with Gustav Radbruch's principle of legal certainty, which emphasizes the importance of clear, easy-to-understand, and consistently applied laws. Thus, BPN Demak's steps not only increase legal certainty for the community, but also increase their trust in the land system and contribute to the realization of justice in the land sector.

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