

Legal Protection for Land Heirs Who Apply for Land Ownership Rights Based on a Land Clearance Permit

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Abstract. *This research aims to investigate and analyze the legal concept for land owners who do not yet have a registered land certificate at the National Land Agency and to find out and analyze the legal protection for land heirs who apply for land ownership rights based on a land clearing permit from the Sub-district Head based on Decision Number: 258 / Pdt.G / 2022 / PN.Pbr. This study uses a normative legal approach by reviewing relevant laws and regulations, as well as analyzing cases related to land disputes involving heirs. The data used in this study were obtained through a literature study of law books, journals, and regulations related to land ownership rights and legal protection for heirs. The analysis method used is a qualitative method with a descriptive approach. The results of the study indicate that legal protection for land heirs who apply for land ownership rights based on a land clearing permit from the sub-district head is still inadequate. In many cases, heirs have difficulty in proving the validity of their ownership rights, especially when there is administrative ambiguity or overlapping ownership. Therefore, efforts are needed to improve the land administration system to provide better protection for heirs and reduce the potential for legal disputes in the future.*

Keywords: *Inheritance; Land; Law; Protection.*

1. Introduction

Land plays a strategic role in people's lives, especially in Indonesia, making it a very important resource from a social, economic, and cultural perspective. From an agrarian law perspective, land is not only seen as a valuable object, but also has a deep philosophical value for the lives of local communities. Therefore, issues regarding land ownership and control are often a source of conflict in society. One of the main principles regulated in the UUPA is that land rights must be based on the principles of justice, benefit, and legal certainty. However, in practice, many

problems still arise, especially related to the recognition of land rights originating from land clearing permits issued by sub-district heads.

Land clearing permits are often used as a basis by the community to apply for land ownership rights. However, this document often raises legal issues, especially when the heirs of the holder of the letter apply for ownership rights after the testator dies. This is complex because a land clearing permit is not proof of land rights that is directly recognized by the UUPA, but only functions as an initial step in the process of recognizing land rights.

Legal protection for heirs who apply for land ownership rights based on a land clearing permit is very important to ensure justice and legal certainty. The main problem faced is whether the document can be used as a valid legal basis for applying for ownership rights, and what proof process must be carried out by the heirs to obtain recognition of these rights. Therefore, an in-depth study is needed regarding legal protection for land heirs in this context, including an analysis of laws and regulations, field practices, and relevant court decisions. One form of problem that often arises is legal protection for land heirs who apply for land ownership rights based on a Land Clearing Permit (SIMT) issued by the sub-district head. Although SIMT is one of the bases for legal land ownership, legal recognition and protection for heirs often encounter obstacles, especially in the process of legalizing land rights. As a result, heirs who obtain land based on SIMT often face administrative and legal obstacles in obtaining legally recognized ownership rights.

On the other hand, the potential for conflict in society, both between heirs and with other parties, further emphasizes the importance of legal protection in this context. Therefore, an in-depth study is needed regarding the philosophical, legal, and sociological foundations related to legal protection for land heirs in this case. The philosophical basis for legal protection for land heirs can be referred to in Article 33 paragraph (3) of the 1945 Constitution which states that: "The land, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. In this context, heirs who apply for land ownership rights based on SIMT need to obtain legal protection so that they can use the land for their welfare legally and safely.

Sociologically, the problem of legal protection for land heirs reflects the dynamics of a society that still relies on traditional mechanisms in land ownership. In many cases, conflicts arise due to the absence of formal administrative evidence. Many lands are inherited only based on certificates that are not registered with the BPN, making them vulnerable to disputes. This study aims to determine and analyze the legal concept for land owners who do not yet have a registered land certificate at the National Land Agency, as well as legal protection for land heirs who apply for land ownership rights based on a land clearing permit from the sub-district head.

2. Research Methods

This research is a normative legal research that focuses on the analysis of legal regulations governing land inheritance and land ownership rights based on SIMT issued by the Head of the District. The research specifications include a study of legal provisions governing land ownership rights, legal protection for heirs, and administrative practices in submitting land ownership rights with a Land Opening Permit.¹The approach method used in this study is the statutory approach method and the conceptual approach. Both of these approaches will provide a more comprehensive insight into the rights and obligations related to the problem being studied.² The types of data used in this study are primary and secondary data. This study also uses data sources obtained from interviews with legal experts or officials authorized in the land administration process.³The data collection techniques used in this study are documentation studies and interviews. The data analysis technique used in this study is qualitative descriptive analysis.

3. Results and Discussion

3.1. Legal Concept Regarding Land Owners Who Do Not Have Land Certificates Registered with the National Land Agency

1) Legal Concept Regarding Land Owners Who Do Not Have Land Certificates Registered with the National Land Agency Administrative Law Theory According to Max Weber

The problem of landowners who do not have registered land certificates at the National Land Agency (BPN) is an issue that is often encountered in agrarian management in Indonesia. Unregistered land has legal implications, especially in the protection of land rights, potential disputes, and legal certainty. In the context of Max Weber's administrative law theory, this problem can be analyzed through a legal rationality approach, which emphasizes an organized formal and procedural legal system.⁴

According to Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA), land registration is an effort to provide legal certainty and legal protection to landowners. Unregistered land is vulnerable to conflict and weak recognition of rights in the eyes of the law.⁵

¹Decree of the Head of the National Land Agency Number 3 of 1997 concerning General Guidelines for Land Registration.

²Subekti, R. (2003). *Hukum Waris Indonesia* (Edisi Revisi). Jakarta: Pradnya Paramita.

³Siallagan, A. (2018). "Perlindungan Hukum Terhadap Ahli Waris dalam Proses Pendaftaran Tanah." *Jurnal Hukum dan Pembangunan*, 10(2), 220-235.

⁴Max Weber (, 1978). *Economy and Society: An Outline of Interpretive Sociology*, ed. Guenther Roth and Claus Wittich Berkeley: University of California Press., p. 217-218.

⁵Law Number 5 of 1960 concerning Basic Agrarian Principles, Article 19.

Max Weber's administrative law theory defines law as a system of rules that are formal and rational. Weber views modern administrative law as a tool to achieve efficiency and justice through a clear bureaucratic structure. In this context, the BPN acts as an administrative institution that carries out its function to record and regulate land ownership.⁶

Unregistered land indicates a weakness in administrative legality. Weber argued that legal legitimacy in modern society depends on compliance with formal rules. Therefore, land ownership without official documents can be considered a form of violation of the principle of formal rationality.⁷

Many factors cause land to be unregistered, such as the lack of public understanding of the importance of registration, costs that are considered expensive, or procedures that are considered complicated. This reflects the existence of inequality in the application of Weber's idealized principles of legal administration.

BPN, as an institution that manages land registration, plays an important role in realizing a rational and efficient legal system. Based on Weber's theory, a good bureaucracy must be able to provide clear, transparent, and easily accessible procedures for the public.

Weber emphasized the importance of legal certainty in the administrative system. Unregistered land reflects a gap in the application of formal law, thus hampering legal protection for landowners.

Landowners without official documents face the risk of losing their land rights. In Weber's theory, this can be seen as a consequence of the absence of formal legal legitimacy that provides protection.

One solution to overcome this problem is to increase public awareness through education and socialization. In addition, simplification of land registration procedures also needs to be done, in line with Weber's efficiency principle.

The main challenge in land registration is the limited resources, both in terms of budget and manpower at BPN. Weber reminded that an effective bureaucracy requires adequate resources to carry out its administrative functions.

The application of formal rationality in land registration requires a consistent and predictable system. This system must be able to provide justice for all parties regardless of social or economic status.

⁶Badan Pertanahan Nasional, "Pentingnya Pendaftaran Tanah," accessed on 24 January 2025.

⁷Max Weber. (1946). *Legal-Rational Authority and Bureaucracy*, dalam *Essays in Sociology*, ed. H. H. Gerth dan C. Wright Mills, New York: Oxford University Press. p. 66.

Effective land registration can increase public confidence in the legal system. Weber emphasized that legal legitimacy depends on public perceptions of justice and administrative efficiency.

Land rights protection must be based on formal written rules, as outlined in Weber's theory. These rules must be universally and consistently applicable by the BPN.

Although Weber's theory was developed in the context of Western society, its principles remain relevant for analysis in the Indonesian legal system, particularly in land management.

Land that has not been registered with the BPN shows a gap in the application of the principle of formal rationality in administrative law. Based on Max Weber's theory, solving this problem requires a structured, efficient, and fair approach. Public education, bureaucratic reform, and strengthening the role of the BPN are important steps in realizing legal certainty in the agrarian sector.

2) Legal Concept for Land Owners Who Do Not Have Land Certificates Registered with the National Land Agency. The Concept of Property Rights in the Naturalist Perspective According to Aristotle.

Land ownership is one of the crucial issues in the agrarian legal system in Indonesia. Based on Article 19 of Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA), land registration is required to ensure legal certainty and protection of land rights. However, there are still many landowners who do not have official land certificates registered with the National Land Agency (BPN). This problem raises various legal and social implications that need to be reviewed further, especially in relation to the concept of property rights according to Aristotle's naturalism view.

In Aristotle's view, property rights are one form of realization of distributive justice. According to the philosophy of naturalism, ownership stems from human nature as social and political beings who need control over objects to achieve common welfare. Private ownership is seen as something natural, but must be managed for the public interest. Aristotle argued that land distribution must be fair and pay attention to the balance between individual and community interests.⁸

According to positive law in Indonesia, the legal status of land ownership must be proven by a certificate issued by the BPN. This certificate is the highest evidence according to the principle of *prior tempore potior iure* in agrarian law. However, for landowners who do not yet have an official letter, ownership rights can be

⁸Aristoteles, *Politics*, Buku I, Bab 5.

recognized based on physical evidence and witness evidence that supports real land ownership.⁹

The absence of registered land certificates is often the root of legal uncertainty. This can lead to conflicts between individuals, agrarian disputes, and the risk of losing land rights. Aristotle's perspective emphasizes the importance of state institutions in ensuring the distribution and protection of property rights through clear and fair regulations.¹⁰

Aristotle's view of distributive justice provides a basis for understanding the importance of proportional land ownership regulation. In this context, natural justice demands fair treatment of undocumented landowners, as long as they can prove their legal ownership of the land according to custom and the facts on the ground.¹¹

Many communities in Indonesia, especially in rural areas, only have traditional evidence such as girik, village certificates, or customary recognition. In Aristotle's view, local customs and traditions have natural legitimacy because they reflect the human need to own and manage resources.¹²

The state has a responsibility to provide legal certainty through land registration. Aristotle emphasized that the state must be a fair mediator to ensure that all parties get their rights. The land certification process must be inclusive and take into account social realities and community capabilities.¹³

Factors such as cost, administrative complexity, and lack of knowledge are major obstacles in the land registration process. In naturalism theory, this indicates a gap between the ideal principles of justice and social reality that must be addressed through wise policies.¹⁴

Legal uncertainty often triggers agrarian conflicts. In this case, Aristotle's view supports the mediation and dialogue approach as a solution that is in line with the principle of distributive justice. The state must provide a fair and transparent dispute resolution mechanism.¹⁵

Land certification not only provides legal certainty but also increases the economic value of land as an asset that can be used as collateral. In Aristotle's view, this

⁹Article 19 of the UUPA and Government Regulation Number 24 of 1997 concerning Land Registration.

¹⁰Aristoteles, *Nicomachean Ethics*, Buku V, Bab 3.

¹¹*Ibid.*

¹²*Pengantar Antropologi*, 1985.

¹³Aristoteles, *Politics*, Buku III, Bab 9.

¹⁴Bambang Sugeng. (2020). "Problematika Sertifikasi Tanah di Indonesia," *Jurnal Hukum Agraria*.

¹⁵*Ibid.*

reflects the ultimate goal of ownership, namely supporting the welfare of individuals and society.¹⁶

Integrating the concept of Aristotelian naturalism into Indonesian agrarian policy can be done by strengthening the legal system based on distributive justice. The state must accommodate traditional ownership while encouraging wider land registration.¹⁷

Agrarian reform can be seen as an implementation of Aristotle's principle of justice, where land distribution aims to reduce inequality and ensure fair access to resources.¹⁸

The importance of education and socialization regarding land registration is one concrete step to bridge the gap between formal law and traditional practices.¹⁹

The use of technology, such as digitizing land data, can improve the efficiency and accuracy of the land registration process. This is also in line with Aristotle's view of the importance of efficiency in state administration.²⁰

The legal concept of landowners without official documents must accommodate the principle of natural justice according to Aristotle's view. The state needs to strengthen the legal system, provide wider access to land registration, and respect traditional ownership. Thus, legal certainty and shared prosperity can be achieved optimally.

Land ownership without official certificates is still common in Indonesia, especially in rural areas. According to research published in the UNISSULA Law Journal, many rural communities do not understand the importance of land certification and the procedures for making it. This results in low interest in certifying their land, even though land certificates play an important role in providing legal certainty and preventing disputes.²¹

Legally, although land that has not been certified is still recognized as owned, it does not have strong legal force compared to certified land. Land certificates serve as legal evidence of land ownership and provide legal protection for their owners. Without a certificate, land owners are at risk of facing legal problems, such as claims of ownership by other parties or difficulties in the land buying and selling process.

¹⁶Aristoteles, *Politics*, Buku II, Bab 6.

¹⁷*Ibid.*

¹⁸ Soetandyo Wignjosoebroto. (2002). *Hukum dalam Masyarakat*.

¹⁹*Ibid.*

²⁰*Op. cit.*

²¹*Jurnal Hukum UNISULA* Volume 38 No. 2, August P-ISSN: 1412-2723

Therefore, it is recommended for landowners who do not yet have certificates to immediately take care of their land certification through the National Land Agency (BPN). This certification process will provide legal certainty and protection of land ownership rights, as well as prevent potential disputes in the future.

3.2. Legal Protection for Land Heirs Who Apply for Land Ownership Rights Based on a Land Clearing Permit from the Sub-district Head Based on Decision Number: 258/Pdt.G/2022/PN.Pbr

1) Legal Protection for Land Heirs Who File for Land Ownership Rights Based on a Land Clearing Permit from the Sub-district Head Administrative Law Theory According to Max Weber

This study aims to examine the legal protection of land heirs who apply for land ownership rights based on a land clearing permit from the Sub-district Head. In the context of land administration in Indonesia, legal protection for heirs has an important role in preventing land ownership conflicts. This is in line with Max Weber's thoughts on formal legality and rational administration which emphasize legal validity through standard administrative procedures.²²

Legal protection for heirs who apply for land ownership rights based on a land clearing permit includes aspects of legal formality and the substance of justice. Based on agrarian law in Indonesia, land rights must be supported by valid administrative evidence, one of which is a permit from an authorized agency. However, the legal protection provided is not only in administrative procedures, but also in substantial justice for the parties involved.²³

According to Max Weber, modern administrative law is formal, rational, and bureaucratic. The land clearing permit issued by the Sub-district Head is a manifestation of the principle of hierarchically organized bureaucracy. Weber stated that legal legitimacy is obtained through compliance with formal procedures that are rationally regulated. In this case, the permit becomes the basis of legitimacy for heirs to apply for land ownership rights.

The procedure for applying for land ownership rights requires valid documents, including a land clearing permit. This is in line with Weber's idea that effective administrative law depends on compliance with formal procedures designed to prevent abuse of authority. In the context of legal protection, the existence of this document provides legal certainty for heirs.²⁴

²²Max Weber. (1978). *Economy and Society: An Outline of Interpretive Sociology*, ed. Guenther Roth and Claus Wittich Berkeley: University of California Press P. 956.

²³Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA), Article 16.

²⁴Erman Rajagukguk. (2020). "Sistem Hukum Administrasi di Indonesia: Perspektif Teori Birokrasi Weber," *Jurnal Hukum dan Pembangunan*.

The land clearing permit from the Sub-district Head functions as a supporting document that strengthens the heir's claim to the land. This document is an administrative evidence tool recognized by law. Max Weber emphasized the importance of documents in a rational administrative system, where every decision is based on a verifiable written record.²⁵

In cases of land disputes, the court will refer to administrative evidence submitted by the parties. A land clearing permit can be a strong evidence if issued in accordance with applicable procedures. Weber associates modern bureaucracy with legal certainty, where administrative documents become a tool to regulate legal relations fairly and transparently.

Legal certainty is one of the main principles in legal protection. Weber emphasized that a rational legal system must ensure predictability in the application of law. In this context, the existence of a land clearing permit provides legal certainty for heirs in claiming rights to the land in question.²⁶

In addition to legal certainty, substantial justice is also an important element in legal protection. Weber acknowledged that although administrative law is formal, the application of the law must pay attention to justice for all parties. In the case of land heirs, the courts and related agencies must consider the rights of the heirs fairly.

Although legal protection is available, there are challenges in its implementation, such as the lack of public understanding of legal procedures and the potential for abuse of authority by officials. Weber warns that an unsupervised bureaucracy can become an instrument of domination that is detrimental to society.

Supervision of the issuance of land clearing permits is essential to ensure that legal procedures are followed. Weber emphasized the importance of accountability in the bureaucracy to prevent abuse of power. With good supervision, the rights of heirs can be optimally protected.

Bureaucratic reform is needed to increase transparency and efficiency in land administration. According to Weber, an ideal bureaucracy should be based on the principle of rationality, where every decision is based on clear and accountable rules.

Legal protection for land heirs who apply for ownership rights based on a land clearing permit from the Sub-district Head is an integral part of the administrative legal system in Indonesia. Referring to Max Weber's theory, this protection must

²⁵Philip Selznick. (1948). "Foundations of the Theory of Organization," *American Sociological Review*, Vol. 13, No. 1.

²⁶Bagir Manan. (2017). *Hukum Administrasi Negara Indonesia*, Bandung: Alumni. P. 144.

include legal certainty through legitimate formal procedures, as well as substantial justice for the parties involved.

To improve legal protection, it is recommended that there be socialization of legal procedures to the public, strengthening supervision of authorized officials, and bureaucratic reform to create a more transparent and accountable administration. Thus, the rights of heirs can be protected more effectively.

2) Legal Protection for Land Heirs Who Apply for Land Ownership Rights Based on a Land Clearing Permit from the Sub-district Head. The Concept of Property Rights in the Naturalist Perspective According to Aristotle.

In the context of agrarian law in Indonesia, heirs who apply for land ownership rights based on a land clearing permit face complex legal challenges. The permit is often the administrative basis for land ownership claims, but the process of legalizing ownership rights requires legal clarity in accordance with national agrarian regulations. This issue becomes even more important when associated with the concept of property rights in the naturalist view according to Aristotle, which emphasizes justice and the fulfillment of human goals through legitimate ownership.²⁷

A land clearing permit issued by the sub-district head is an administrative document that gives the applicant the right to manage and utilize certain land. However, in the process of transferring to a certificate of ownership, the heirs must meet the requirements stipulated by the Basic Agrarian Law (UUPA) No. 5 of 1960. In this case, legal protection aims to ensure that the application for ownership is in accordance with the procedure and does not violate the rights of other parties.²⁸

Article 9 of the UUPA states that land rights must be based on the principles of justice, utility, and legal certainty. Heirs who wish to apply for ownership rights need to prove that control of the land has fulfilled the elements of sustainable management and does not conflict with legal regulations. In this context, legal protection can be provided through an administrative verification process by the National Land Agency (BPN).

According to Aristotle, property rights are part of the natural order that allows humans to achieve happiness and the highest good. In the book *Politics*, Aristotle explains that private ownership allows humans to use resources wisely for the common good. Thus, the right to land ownership by heirs must be seen as an effort to achieve distributive justice, where land is used in accordance with the goals of humanity and morality.

²⁷Aristoteles, *Politics*, Buku II, diterjemahkan oleh Benjamin Jowett, 350 SM.

²⁸Basic Agrarian Law (UUPA) no. 5 of 1960, Article 9.

Land clearing permits have a strategic function as the beginning of the state's recognition of rights to individuals. However, in Aristotle's view, this administrative document is only valid if it reflects the principle of natural justice. The state acts as a regulator that ensures that the permit is not misused to harm others or create social inequality.²⁹

Heirs must go through several stages in obtaining a certificate of ownership, including land measurement, public announcement, and issuance of the certificate by the BPN. These stages aim to avoid disputes and ensure that the ownership claim is legally valid. This process reflects the principle of legal justice as outlined by Aristotle, where law functions as a mechanism to maintain social balance.

Some of the challenges often faced by heirs include lack of complete documentation, conflict with third parties, and lengthy administrative processes. In Aristotle's view, these challenges reflect a lack of harmony in the social order. Therefore, the role of the state is needed to provide effective legal protection.

Legal certainty is an important element in the protection of heirs. This can be achieved through the harmonization of administrative rules and the principles of natural justice. Aristotle emphasized the importance of clear and just laws so that people can live in peace and achieve their goals.

Land ownership rights must reflect the principles of justice, both distributive and commutative. Distributive justice ensures that land is managed for the common good, while commutative justice protects individuals from detrimental actions. In this context, heirs who have met the administrative requirements are entitled to legal protection to ensure that justice is realized.

The author's analysis includes:

To improve legal protection, the government needs to simplify administrative procedures and provide legal assistance to heirs who are experiencing difficulties. In addition, strengthening the capacity of the BPN in resolving land disputes is also an important step to ensure justice.

Legal protection for land heirs who apply for ownership rights based on land clearing permits requires a holistic approach. The process must be in line with the principle of natural justice as explained by Aristotle, where property rights are used to support the welfare of individuals and society. The state must play an active role in ensuring that the recognition of property rights is carried out fairly, effectively, and transparently.

²⁹Badan Pertanahan Nasional. (2023). *Prosedur Penerbitan Sertifikat Hak Milik*.

Legal protection for heirs who apply for land ownership rights based on a land clearing permit from the sub-district head requires special attention. The permit generally serves as a basis for managing or utilizing the land, but does not automatically grant ownership rights to the land. Therefore, heirs need to go through a certain legal process to obtain legal ownership rights.

According to research conducted at Sultan Agung Islamic University (Unissula), the transfer of land rights through sale and purchase must be carried out by the legal owner and accompanied by the preparation of a Sale and Purchase Deed before the Land Deed Making Officer (PPAT). If the sale and purchase of inherited land occurs without the consent of all heirs, then the sale and purchase can be considered null and void by law. As a result, the land ownership rights remain with the legal heirs, and they have the right to file a lawsuit in court to defend their rights.³⁰

In this context, heirs who wish to apply for land ownership rights based on a land clearing permit from the sub-district head should ensure that all legal procedures have been fulfilled. The steps that need to be taken include:

- 1) Land Registration: Submit land registration to the National Land Agency (BPN) to obtain a land title certificate as proof of legal ownership.
- 2) Consent of All Heirs: Ensure that all heirs provide written consent regarding the application for ownership of the land.
- 3) Making a Deed of Sale and Purchase: If a sale and purchase transaction occurs, ensure that the Sale and Purchase Deed is made before a PPAT by fulfilling all applicable legal requirements.

Based on Decision Number: 258/Pdt.G/2022/pn. Pbr

The case has been attempted to be reconciled in accordance with the Peace Letter between the Plaintiff and Defendant and by the Panel of Judges at the Pekanbaru District Court, it has been decided with the following provisions:

- 1) Peace Deed:

That the Defendant (Second Party) has agreed and is willing to hand over money in the amount of IDR 100,000,000.- (one hundred million rupiah) to pay off the underpayment which is the right of the Plaintiff (First Party) for the Deed of Sale and Purchase (AJB) Number 585/SH/1985 in the name of the Plaintiff (First Party) and the Plaintiff (First Party) has also agreed to it.

³⁰*Jurnal Hukum UNISULA*. Volume 38 No. 2, August P-ISSN: 1412-2723

2) Pekanbaru District Court Decision Number: 258/Pdt.G/2022/PN Pbr tried the parties:

- a. Punish both parties to comply with the mutual agreement that has been agreed upon/agreed upon;
- b. Ordering both parties to pay court costs in the amount of IDR 1,180,000.00 (one million one hundred and eighty thousand rupiah).

4. Conclusion

Communities are expected to document land ownership properly and understand registration procedures to avoid future legal problems. Fair law enforcement and understanding of land rights can help ensure legal ownership and prevent disputes. It is hoped that effective education, regulation and law enforcement are essential for the resolution of land conflicts and proper registration.

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