

## **Legal Consequences of the Implementation of the Provision of Customary Land Grant Carried Out in a Carangan Manner by The Kutai Tribe's Customary Community of Kutai Kartanegara Regency**

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**Abstract.** *This study aims to analyze the legal consequences of the implementation of granting land rights grants carried out orally by the Kutai Tribe indigenous community in Kota Bangun District, Kutai Kartanegara Regency, and to examine the form of legal protection for the recipients of the grants. The research method used is empirical juridical research with a socio-legal approach. Data were obtained through library research and field research in the form of interviews with traditional leaders, recipient communities, and parties related to the practice of carangan grants. The analysis was conducted using descriptive analysis, by examining the practice of carangan grants that are still maintained by indigenous communities as part of living customary law and are based on the values of family, trust, and social harmony as well as practices that cause problems from a positive legal perspective because they do not meet the formal requirements in the form of a deed from a Land Deed Making Officer (PPAT) and registration of transfer of land rights as regulated in laws and regulations. The results of the study indicate that land rights grants made through carangan are recognized and have binding force according to the customary law of the Kutai Tribe because they are based on the principles of kinship, good faith, and recognition of the indigenous community. However, from a positive legal perspective, the grant has not provided legal certainty regarding the status of land ownership because it does not fulfill the provisions of Article 37 of Government Regulation Number 24 of 1997 concerning Land Registration which requires a PPAT deed as the basis for registering the transfer of rights. Legal protection for recipients of carangan grants can be obtained through customary law recognition and legal remedies in the form of court decisions as the basis for changing land registration data. Therefore, harmonization between customary law and national law is needed by increasing public awareness to document grants in authentic deeds without ignoring the customary legal values that exist in the community.*

**Keywords:** Grants; Law; Legal; Protection.

## 1. Introduction

A grant is a free gift or a form of reward to someone. Granting a grant is carried out as a social function in society, so that land inheritance problems can be resolved through a grant, but in reality a grant is not the right solution to land problems. The definition of a grant is regulated in Article 1666 of the Civil Code which reads: "A grant is an agreement by which the grantor, during his lifetime, freely and irrevocably, hands over an object for the needs of the recipient of the grant who receives the handover."<sup>1</sup>

According to Government Regulation No. 24 of 1997, a grant is a legal act of transferring rights to land and buildings, which can only be registered at the Land Office if evidenced by a deed from a PPAT (Land Deed Making Official). This process is mandatory to provide legal certainty and protection for the grant recipient.<sup>2</sup>

According to customary law, a gift is the voluntary transfer of property from one person to another for the benefit of the recipient without expecting anything in return. Its implementation can vary between regions and indigenous communities, including provisions regarding the revocation of the gift, the approval of traditional leaders, and the existence of kinship or clan ties.<sup>3</sup>In this writing, I will research the Kutai Tribe's Customary Grants, where the Kutai Tribe's Customary Grants are carried out in a "Carangan" or verbal manner.<sup>4</sup>The granting of gifts according to Kutai Tribe Customs is very contrary to the applicable law which requires that the grantor of a gift must register the land with the National Land Agency to obtain proof of ownership of a land title certificate recognized by the state.<sup>5</sup>

In reality, it's still common to find grant recipients who lack legal proof of ownership of the land. This is particularly detrimental to grant recipients who received the grant from their parents verbally or through "carangan."<sup>6</sup>[Study Article 37 of PP 24 of 1997](#) confirms that the transfer of rights to land and apartment units, such as sales and purchases or gifts, can only be registered if proven by [PPAT deed](#) legitimate. The need for [legal certainty and protection](#) For the rights holders receiving the grant, customary law recognizes the principle of kinship, which places great emphasis on relationships between family members and the community and maintaining harmony within those relationships.

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<sup>1</sup>Civil Code (Burgerlijk Wetboek).

<sup>2</sup> Article 37paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration.

<sup>3</sup>Bushar Muhammad, 2004, Principles of Customary Law, Pradnya Paramita, Jakarta, p. 34.

<sup>4</sup>Hilman Hadikusuma, 2003, Customary Inheritance Law, Citra Aditya Bakti, Bandung, p. 19.

<sup>5</sup>Hilman Hadikusuma, 2014, Introduction to Indonesian Customary Law, Mandar Maju, Bandung, p. 11.

<sup>6</sup>Law Number 5 of 1960 concerning Basic Agrarian Regulations.

Therefore, the rights of the grantee can still be protected by customary law, depending on the circumstances. Granting customary legal protection will undoubtedly result in legal consequences for the grantee based on the principle of kinship.<sup>7</sup>

## 2. Research Methods

The research entitled "Legal Consequences of the Implementation of Customary Land Grants Carried Out in a Carangan Way by the Kutai Tribe Indigenous Community in Kota Bangun District, Kutai Kartanegara Regency, East Kalimantan Province" is an empirical juridical research, namely legal research regarding the enforcement or implementation of normative legal provisions in real behavior in every legal event that occurs in society. This research is based on library research but to complement the data obtained from library research, field research was conducted.

## 3. Results and Discussion

### 3.1. Legal Consequences of the Implementation of Customary Land Grants Carried Out in a Carangan Manner by the Kutai Tribe Indigenous Community, Kutai Kartanegara Regency.

A grant is a unilateral legal relationship. This means that the grantor provides the grant to the grantee free of charge without any compensation from the grantee. The grantee can be the heirs or the heirs themselves. There are three conditions that must be met in making a grant according to Islamic law: *ijab*, *qabul*, and *Qabdlah*. *Ijab* is a statement made by the grantor regarding the gift. This grant can be conveyed verbally or through a notarial deed. *Qabul* is the acceptance of the gift by the recipient, whether this acceptance is made clearly and firmly or vaguely. The forms and mechanisms for accepting gifts in society certainly vary.<sup>8</sup> For example, a child who receives a piece of land as a gift from his parents, when given it, says "I accept it".

Acceptance of a gift according to Islamic law should accept what is given by another person to him, because the gift is a sustenance given by Allah to him, but in line with the development of the times as evidence to strengthen the existence of the gift is usually done in writing with an authentic deed containing the gift giving and acceptance of the gift simultaneously or in a separate deed. *Qabdlah* is the transfer of property carried out by the grantor to the recipient of the gift, so in this case, there is a transfer of property from the giver to the recipient. The form, shape and mechanism of the transfer of property in the midst of society are diverse according to the legal feelings that live and grow in it. For example, someone who has donated his land to the recipient of the gift,

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<sup>7</sup>Abdul Kadir Muhammad, 2001, Contract Law, Citra Aditya Bakti, Bandung, p. 21.

<sup>8</sup>PNH Simanjuntak, 1999, Principles of Indonesian Civil Law, Jakarta, Djambatan, p. 295

must hand over the land he donated completely to the recipient of the gift and he can no longer say that the land is his and cannot sell the land to another person as if the land is still his.

The conditions for making a gift according to Islamic law are regulated in Article 210 of the Compilation of Islamic Law which states:

1. The person is at least 21 years old;
2. Must be of sound mind;
3. No coercion;
4. Donate a maximum of 1/3 (one third) of their assets to other people or institutions;
5. The grant is given in the presence of two witnesses; And
6. The items donated belong to the donor himself.

Sayid Sabiq stated that several conditions must be met for a gift to be valid under Islamic law. These conditions include:

1. Requirements for donors:
  - a. The goods that what is donated belongs to the donor. Therefore, it is not valid to donate someone else's property;
  - b. The grantor is not a person whose rights are limited for any reason;
  - c. The grantor is a person who is capable of acting according to the law (mature and not lacking in reason);
  - d. The grantor is not forced to make a gift.
2. Conditions for grant recipients: Grant recipients must be people who actually exist at the time the grant is made.
3. The conditions regarding the objects donated must meet the following requirements:
  - a. The object actually exists and belongs to the person giving the gift;
  - b. The object has value;
  - c. The object has its substance, is accepted for circulation and its ownership can be transferred;
4. The thing that The gift can be separated and handed over to the recipient of the gift.

The conditions for grants in the Civil Code are:<sup>9</sup>

1. Grantor requirements:

- a. The grantor must be an adult, namely someone who has reached the age of 21 (twenty one) years or has been married (Article 330 of the Civil Code);
- b. The grant is given while the grantor is still alive;
- c. Gifts do not have a marital relationship between husband and wife and the recipient of the gift, but the Civil Code still allows gifts to husband and wife for objects whose price is not too high according to the donor's ability.

2. Requirements for grant recipients:

- a. The recipient of the gift already exists at the time of the gift, but if it turns out that the interests of the child in the womb require it, then the law can consider the child in the womb as having been born (Article 2 of the Civil Code);
- b. The recipient of the gift is not the former guardian of the recipient of the gift, but if the guardian has calculated responsibility for his or her guardianship, then the former guardian may receive the gift (Article 904 of the Civil Code).

Among Islamic jurists, some hold that a property owner may donate all of their assets to another person. Some, such as the Hanafi school of jurisprudence, prohibit a property owner from donating all of their assets to another person, even in acts of kindness. They consider such a person to be like a fool whose actions must be restrained. The differing opinions expressed by these Islamic legal experts will enrich the understanding of the Indonesian Muslim community regarding donations.

The first opinion permits the giving of all assets from the heirs. Meanwhile, the Hanafi school prohibits giving all assets as a gift because above that there are still rights of the heirs. Therefore, in the gift of assets involved the rights of the heirs, the limitation of assets given by a gift giver to the recipient of the gift may not exceed 1/3 (one third) of the portion. In this case, two things can be distinguished: if the gift is given to another person (other than the heirs) or a legal entity, the majority of Islamic legal experts agree that there is no limit, but if the gift is given to the children of the gift giver, according to Imam Malik and Ahlul Zahir it is not permitted.

The Compilation of Islamic Law adheres to the principle that gifts can only be made of 1/3 (one third) of the assets one owns, gifts from parents to their children can be counted as inheritance. If the grant is implemented in deviation from these provisions, it is hoped that there will be no divisions between

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<sup>9</sup>Civil Code.

families. The principles adhered to by Islamic law are in accordance with the culture of the Indonesian nation and are also in accordance with what Muhammad Ibnul Hasan stated that a person who loses all his property is an idiot and is not worthy of taking legal action. Because the person who donated the property is considered incapable of acting legally, the donation made is considered invalid, because he does not meet the requirements for making a gift. If the person's actions are linked to the benefit of the family and their heirs, this is not justified because in Islamic Sharia it is ordered that each individual take care of himself and himself to improve the welfare of the family.

In the Kutai tribal community in Kota Bangun District, Kutai Kartanegara Regency, East Kalimantan Province, grants can be made through a "carangan" (or "gift"). Carangan is a term in the Kutai tribal community that refers to the implementation of legal acts orally without being formalized in writing or an authentic deed. In customary grant practice, carangan is carried out based on mutual trust and recognition within the family and community. Carangan embodies the values of family and honesty that are highly valued in the Kutai tribal community.<sup>10</sup>

The implementation of a carangan grant is considered valid under customary law because it is based on norms and customs that have been passed down through generations. However, carangan grants pose problems from a positive legal perspective because they do not meet the formal requirements for written evidence. As a result, recipients of carangan grants often experience difficulties in proving their rights to the land they receive, especially when dealing with other parties or in court disputes.<sup>11</sup>

Legal consequences are the consequences that arise due to an act, in accordance with the applicable regulations. An agreement between two competent parties can result in the birth of an agreement. Legal consequences can also occur due to the granting of a gift through a customary mechanism, namely carangan. The legal consequences of a deed of gift given through carangan only apply according to customary law in the Kutai ethnic community. The National Land Agency Office can change the name of the land certificate in the name of the recipient of the gift carried out through carangan, if the recipient of the gift submits a court decision. Based on an official copy of the court decision that has permanent legal force. This is based on Article 55 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration, that the court clerk is obliged to notify the Head of the Land Office regarding the contents of the court decision that has permanent legal force and the decision of the head of the court that results in changes to the data regarding the registered land plot or apartment

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<sup>10</sup>Results of an interview with H. Iskandar, Customary Head of the Kutai Tribe, Kota Bangun District, Kutai Kartanegara Regency, East Kalimantan Province.

<sup>11</sup>*Ibid.*

unit to be recorded in the relevant land book and, if possible, on the certificate and other lists.<sup>12</sup>

Under Indonesian law, a gift not registered in a deed of gift (whether oral, *carangan*, or simply underhand) is void. According to Article 1682 of the Civil Code, gifts of immovable property (such as land or buildings) must be made through a notarial deed and must be registered with a Land Deed Official (PPAT) for the transfer of title at the National Land Agency.<sup>13</sup>

As for grants made through a grant, it is best to put them in the form of a deed of grant so that there is legal certainty for the grant recipient and to prevent disputes between the parties in the future.

### **3.2. Legal Protection for the Granting of Customary Land Grants Carried Out in a Carangan Manner by the Kutai Tribe Indigenous Community, Kutai Kartanegara Regency.**

Land is a gift from God Almighty and is a natural resource that is very necessary for humans. Humans reproduce every year so that the number of humans increases so that land is very necessary and fought over by humans because land is a source of life for humans to live continuously and live and fulfill their needs, both those that are directly for their lives such as farming or a place to live.

Land is a source of life not only for humans but for every living creature on earth such as animals and plants. Humans live and reside on land and utilize land as a source of life by planting plants that produce food. Considering the importance of land because it can produce natural resources that are very useful for many people, it needs to be regulated by the government as stated in Article 33 paragraph 3 of the 1945 Constitution which reads: "the land and water, the natural resources contained therein, are controlled by the State and used for the greatest prosperity of the people."

In the Civil Code, land is categorized as immovable property in accordance with Article 506 of the Civil Code. To address the gap in land issues, the government enacted the Basic Agrarian Law Number 5 of 1960 concerning Basic Agrarian Regulations (State Gazette of 1960 Number 104). Article 23 paragraph 1 of the Basic Agrarian Law stipulates that, "ownership rights, as well as any transfer, annulment and encumbrance with other rights must be registered according to the provisions referred to in Article 19 of the Basic Agrarian Law."

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<sup>12</sup>Results of an interview with Taufik Hidayat as Coordinator of the Substantive Group for Determination of Land Rights and Office Space of the National Land Agency, Kutai Kartanegara Regency.

<sup>13</sup>Results of an interview with Meldri Yanto Abu, Notary/PPAT of Samarinda City, East Kalimantan Province.

In Government Regulation Number 24 of 1997 Article 37 paragraph (1) states that, "transfer of land rights and ownership rights to apartment units through sale and purchase, exchange, gift, income in a company and other legal acts of transfer of rights. Except for the transfer of other rights, except for the transfer of rights through auction, can only be registered if proven by a deed made by an authorized PPAT according to the provisions of applicable laws and regulations."

The transfer of land rights must be proven by a land certificate that has been legalized by the Land Deed Official (PPAT) where the land is domiciled. The certificate is proof of the originality of land ownership and has strong legal force. An authentic deed itself in civil law is stipulated in Article 1868 of the Civil Code, which contains the meaning of a deed made in a form determined by law or before a public official authorized for that deed to be made. An authentic deed made by a PPAT serves as evidence that certain legal acts have been carried out. The transfer of land rights is a legal act with the aim of transferring land rights from one party to another party that is carried out legally. To ensure legal certainty, the transfer of land rights must be carried out through the transfer of land rights. There are several legal acts that can transfer land rights, including legal acts based on sales, gifts, inheritances, and endowments.<sup>14</sup>

The above is as referred to in Article 37 Paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration. This article states that the transfer of land rights and ownership rights to apartment units through sale and purchase, exchange, donation, company investment and other legal acts of transfer of rights, except for transfer of rights through auction, can only be registered if proven by a deed made by an authorized PPAT according to the provisions of applicable laws and regulations.

Land has many uses for human life on this earth, including for business and agricultural purposes. Land can also be used as an object of transfer of rights. Transfer of land rights is the transfer of land rights from the previous rights holder to the new rights holder according to applicable laws and regulations. There are two methods for transferring land rights:<sup>15</sup>

#### 1. Switch

Transfer means the transfer of land rights from the rights holder to another party due to a legal event. An example of a legal event is the death of a person. With the death of the rights holder, the land rights are legally transferred to the heirs as long as the heirs meet the requirements as the subject of the rights to the inherited land rights object. Land rights have been legally transferred to the heirs since the land rights holder as the heir died. Transfer indicates the transfer of

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<sup>14</sup>Muhammad Ilham Arisaputra, 2015, *Agrarian Reform in Indonesia*, Jakarta, Sinar Grafika, p. 55.

<sup>15</sup>Urip Santoso, 2017, *Land Deed Officials: Perspectives on Regulation, Authority, and the Nature of Deeds*, Jakarta, Kencana, pp. 62-63.

land rights without any legal action taken by the owner, for example through inheritance or donation.

## 2. Diverted

Transferred means the transfer of land rights from the land rights holder to another party due to a legal act. Examples of legal acts are grants, sales, exchanges, capital contributions (inbreng) as evidenced by a deed made by a Land Deed Making Officer (PPAT), while legal acts in the form of auctions are evidenced by Minutes or Auction Minutes made by an official from the Auction Office. Transfers of land rights through grants, sales, exchanges, capital contributions (inbreng), and auctions must be registered with the local Regency/City Land Office to be recorded in the Land book and the name of the land rights holder on the certificate must be changed from the name of the original land rights holder to the new name. Grants refer to the transfer of land rights through legal acts carried out by the owner, for example through sales and other rights transfer activities.

Referring to Article 1666 of the Civil Code which states, "a grant is an agreement by which the grantor during his lifetime freely and irrevocably hands over an object for the benefit of the recipient of the gift who receives the gift. The law does not recognize other gifts other than gifts between living people." According to Article 1666 of the Civil Code, a grant is an agreement by which a grantor hands over an item freely, without being able to withdraw it, for the benefit of a person who receives the gift. A land grant is a gift from one person to another without any replacement and is done voluntarily, without any counter-performance from the recipient of the gift, and the gift takes place while the giver is still alive.

Prior to the enactment of Government Regulation Number 24 of 1997 concerning Land Registration, for those subject to the Civil Code, a deed of gift or will must be made in writing by a Notary. A deed of gift or will not made by a Notary has no legal force. The legal force of a deed of gift lies in its function as an authentic deed itself, namely as a valid means of evidence according to law, so this is a direct consequence of the requirement of statutory provisions, that there must be authentic deeds as a means of proof. To be a valid means of evidence, a deed of gift must be made and signed by an authorized official and the parties involved.

Law Number 30 of 2004 Article 1 point 1 states, PPAT is a Public Official who is authorized to make Authentic Deeds and other authorities that are still related to the land sector and its powers. The authority of PPAT to make deeds related to land, especially the Granting of Land Rights, must be reviewed from the National Land Agency Regulation Number 8 of 2012 concerning Amendments to the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency

Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration.

The creation of a certificate of land ownership will create an authentic deed, as stated in Article 1868 of the Civil Code "An authentic deed is a deed made in the form determined by law by/or before a public official authorized for that purpose, at the place where the deed is made." Therefore, the creation of an authentic deed before a PPAT is very important considering that if at any time the land ownership rights will be disturbed by another person until a dispute arises, and can be countered with a certificate that already has permanent legal force.

In accordance with Article 1666 of the Civil Code, which states that a gift is an agreement whereby a gift giver hands over an item free of charge, without being able to withdraw it, for the benefit of a person who receives the gift. The law only recognizes gifts between living people.

A deed of gift can be a crucial basis in a legal proceeding because it fulfills the characteristics of an authentic deed. These characteristics include a form prescribed by law, drawn up by or before a competent public official at the location where the deed is drawn up. As long as these elements are met, a deed of gift will have perfect evidentiary power because it has three types of evidentiary power: external evidence, formal evidence, and material evidence.

External proof means that the form of the deed follows the established form. Furthermore, what is meant by formal proof is that the making and signing of the deed are actually carried out before the PPAT so that the PPAT can guarantee the time of signing, the presence of the parties, and the PPAT actually hears the statements made by the parties to be recorded in the deed. Then what is meant by material proof is the truth of the identity and authority conveyed by the parties who are present and sign the deed stated to the PPAT. So as long as a gift deed in its filling follows the gift deed form that has been determined by the Head of the National Land Agency, what is stated by the PPAT regarding the time of signing, initials, and the presence of the parties and witnesses is true; and everything stated by the parties regarding the identity and authority to act in the deed is true, then a Gift Deed will have perfect evidentiary power, so that it can be the basis for a legal event of a gift.

Thus, to register the transfer of land rights due to a gift, a deed of gift by a PPAT is the main requirement. Although it may also apply in certain circumstances as determined by the Minister, the Head of the Land Office may register the transfer of rights to a plot of land with ownership rights, which is carried out between individual Indonesian citizens as evidenced by a deed not made by a PPAT, but which according to the Head of the Land Office is deemed to be of sufficient authenticity to register the transfer of rights in question. This particular

condition applies to remote areas and has not yet been appointed a Temporary PPAT to facilitate the people in carrying out legal actions regarding land. Therefore, after the enactment of Government Regulation Number 24 of 1997, the granting of land grants, whether for land that has been registered (certified) or land that has not been registered (not yet certified), must use an authentic deed made by a PPAT. One of the deeds made by a PPAT is a land title certificate, where the land title certificate is a strong means of proof as stated in Article 19 paragraph 2 letter c, namely: "the granting of documents of proof of rights, which serve as strong means of proof." This is to reduce the risk of lawsuits in the future by certain parties, so that both the grantor and the grantee obtain the same legal certainty for the legal actions carried out. In order to be valid evidence, the deed of gift must be made and signed by authorized officials and the parties involved in it. In addition, in making a deed of gift, it is necessary to pay attention to the object to be donated, because in Government Regulation Number 24 of 1997 it is stipulated that for land gift objects, a deed of gift must be made by a Land Deed Making Officer or called PPAT. However, if the object is other than a movable object, then the provisions in the Civil Code are still used as the basis for making a deed of gift, namely being made and signed by a Notary.

Basically, a grant is valid and its consequences apply to the parties if the grantee has expressly accepted the grant with a notarial deed. This is regulated in Article 1683 in conjunction with Article 1682 of the Civil Code. Article 1682 of the Civil Code states that, "no grant except as referred to in Article 1687 can be made without a notarial deed, the minutes (original text) of which must be kept with a notary and if not done so, the grant is invalid." And Article 1683 of the Civil Code states: "no grant binds the grantor or results in anything before the grant is accepted in express words by the person who is given the grant or by his representative who has been authorized by him to receive the grant that has been or will be granted.

The obligation for the giver and recipient of a gift through a deed of gift to include it in a deed of gift is a form of legal protection for the parties carrying out the deed of gift, because Indonesian law does not yet accommodate this, namely the deed of gift as one of the requirements for registering the land that is the object of the gift. Land registration in question is data maintenance, data registration is the activity of land registration to adjust the physical and legal data in land registration maps, land lists, name lists, measurement letters, land books, and certificates with changes that occur later. Changes in legal data can affect the rights, namely the expiration of the validity period, cancellation, revocation, or being burdened with other rights. Changes can also affect the rights holder, namely if there is an inheritance, transfer of rights or assignment of rights, or a change of name.

Therefore, any changes in data, whether regarding the rights or the land, must be reported to the Land Office to be recorded. According to Government Regulation Number 10 of 1961 and then replaced by Government Regulation Number 24 of 1997 concerning Land Registration which was effective from October 8, 1997. These two regulations are a form of land registration implementation in the framework of *recht kadastral* which aims to provide legal certainty and legal protection to land rights holders, with evidence produced at the end of the land registration process in the form of a land certificate. The land certificate consists of a copy of the land book and a measurement letter. The land rights certificate is a strong evidence. Article 32 paragraph (2) and Article 38 paragraph (2) of the UUPA state that a land certificate is a strong evidence and not an absolute evidence. So the object of the grant in the form of immovable objects or land objects must be registered to strengthen the evidence, proving that the grant has indeed occurred by recording it in the land book and the relevant land certificate so that there is legal certainty regarding the registered grant land.

By registering the transfer of land rights at the District or City Land Office, the community registering the land will receive a guarantee of legal certainty regarding the land owner after the transfer of land rights is carried out, which will be obtained with a new certificate with new legal data or the name of the new rights owner. The guarantee of legal certainty referred to here is:

1. Legal certainty regarding the person or legal entity that owns the land rights. Certainty regarding who owns a plot of land or the subject of the rights;
2. Legal certainty regarding the land area he owns. This concerns the location, boundaries, and area of the land area or object of rights; and
3. Certainty of land rights. If the acceptance of a gift is not made with a deed of gift, then the acceptance can be made with a later authentic deed, the original of which must be kept by a notary, provided that it occurs while the donor is still alive; in such a case, for the donor, the gift is only valid from the time the acceptance of the gift is officially notified to him.”<sup>16</sup>

#### **4. Conclusion**

The legal consequences of a deed of gift given through a *carangan* only apply according to the customs of the Kutai ethnic group. The National Land Agency Office can change the name of the land certificate in the name of the recipient of the gift made through a *carangan*, if the recipient of the gift submits a court decision. Based on an official copy of the court decision that has permanent legal force. This is based on Article 55 paragraph (1) of PP No. 24 of 1997 concerning Land Registration, that the court clerk is obliged to notify the Head of the Land

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<sup>16</sup>Adrian Sutedi, 2014, *Transfer of Land Rights and Registration*, Jakarta, Remaja Rosdakarya, p. 1.

Office regarding the contents of the court decision that has permanent legal force and the decision of the head of the court that results in changes to the data regarding the registered land plot or apartment unit to be recorded in the relevant land book and as far as possible on the certificate and other lists.

Formlegal protection for the parties who carry out a carangan grant, namely by the grantor and recipient of the grant stating their wishes in a deed of grant made before a Notary/PPAT, because the legal provisions in Indonesia have not yet accommodated this matter, namely that the carangan is one of the requirements for registering the land that is the object of the grant.

The legal consequences of a deed of gift granted through a carangan, although only valid under customary law, must be preserved as a cultural feature of the Kutai indigenous people. It is also necessary to consider how this carangan gift can be harmonized so that it can be accommodated within positive law in Indonesia.

Legal protection for deeds of gift given through carangan still really needs to be socialized by various elements and related government institutions to the Kutai indigenous people who still adhere to carangan grants so that they can register land objects that have been donated through carangan so that they can have legal certainty in the future.

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