# Legal Consequence of Land Rights Related To Complete Systematic Land Registration Program (PTSL) In

### **Mojokerto City**

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### ABSTRACT

Land registration and issuance of certificates aim to provide legal certainty over property rights to land and to create orderly land administration. One of the Government's programs in achieving this goal is implementing a Complete Systematic Land Registration through the enactment of the State Minister for Agrarian and Spatial Planning/Head of the National Land Agency Number 1 of 2017 on Acceleration of the Implementation of Complete Systematic Land Registration. Problems to be discusse this study iclude: (1) Is the object of land to be registered in this program Petok D or Letter C? (2) Can the certificate of Ownership Rights guarantee legal certainty for the rights holders? The problem approach used is the normative legal approach. The data consists of secondary and primary data. Data analysis is carried out by using qualitative analysis. The results of this study indicate that: (1) Implementation of Complete Systematic Land Registration on land that has not been certified based on provisions of the Regulation of the State Minister for Agrarian and Spatial Planning or Head of National Land Agency Number 1 of 2017 includes: determination of PTSL activity location, establishment and determination of PTSL Adjudication Committee, counseling, juridical and physical data collection of the land, land checks, announcements of physical data and juridical data on land and proof of rights, issuance of decisions on the awarding or recognition of land rights, bookkeeping and issuance of certificates of land rights and submission of certificates of land rights. (2) the legal consequences of certification of the results of complete systematic land registration are the objections of other parties to the land registration process through PTSL carried out by the registrant, the applicant is difficult to complete the land registration application requirements through PTSL, and the community's understanding is still low against the law in the land sector. Suggestions to be provided in this study are: (1) Mojokerto City Government together with the City Land Office should further improve services to the community, especially in the land sector. (2) Mojokerto City Land Agency should increase legal counseling or socialization about land.

Keywords: Land Registration, Property Rights, City of Mojokerto.

### **1. INTRODUCTION**

Land is important for human life because human life is totally inseparable from land. Humans live on land and obtain food by utilizing land. The history of development and its destruction is also determined by land. Land problems can cause disputes and devastating war because humans or a nation want to control the land of another person or nation because of the natural resources contained in it. Land is one of the primary needs for humans even though even



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humans still need land. Human needs for land today are increasing. This is due to the increasing population, while on the other hand the land area does not increase.

Land in a juridical sense is the surface of the earth. Land rights are rights to certain parts of the earth's surface, rights to land are rights to certain parts of the earth's surface, which are limited, having dimensions of two in length and width. The basis of legal certainty in written legal regulations as executor of the Agrarian Basic Law No. 5 of 1960, allows interested parties to easily know the applicable law and the existing authority and obligations on the land owned.

UUPA clearly regulates land and guarantees legal certainty regarding land. The purpose of legal certainty can be realized with two efforts<sup>1</sup>:

1. Availability of written, complete and clear legal instruments that are carried out consistently in accordance with the soul and its provisions;

2. Implementation of land registration that allows holders of land rights to easily prove the land rights they control, and for interested parties, such as prospective buyers and prospective creditors, to obtain necessary information regarding land that is the object of legal actions to be carried out , and for the government to implement land policies.

In Government Regulation No. 24 of 1997 concerning Land Registration, Article 1 paragraph (1) describes that what is meant by land registration is a series of activities carried out by the government continuously and regularly, covering the collection, management, accounting, and presentation and maintenance of physical data and juridical data in forms of maps and lists, concerning parcels of land and units of flats, intended to provide letters of proof of their rights to plots of land that already have their rights and ownership rights to apartment units and certain rights that burden them.

According to Henri Lie A. Weng, Property rights are the right to enjoy freely and treat the owner of the right as they please. The owner can use it, enjoy it, destroy it, throw it away, sell it (Roesli, Heri, & Rahayu, 2017). In general, the regulation regarding land ownership rights in the Basic Agrarian Law can be seen in Part III Chapter II Article 20 to Article 27, according to the general principles of land ownership rights. Property rights, based on Article 20 of the Agrarian Basic Law, is the right that is hereditary, the strongest and most fulfilled that can be owned by people over land and give authority to use for all kinds of purposes for an unlimited period of time as long as there is no specific prohibition on that.

The strongest and most fulfilled nature means the strongest and most full for holders of property rights and has the right to be free by selling, giving, exchanging and bequeathing. Land tenure rights contain a series of authorities, obligations and / or prohibitions for holders to do or not

<sup>&</sup>lt;sup>1</sup> Urip Santoso, *Pendaftaran dan Peralian Hak Atas Tanah*, Kencana, Jakarta, 2011, p.2.



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do something about the land they are occupying, because the Basic Agrarian Law and government regulations regarding land registration have been established.

The provision of limits, according to Article 4 of the Basic Agrarian Law on interests directly related to the use of land within the limits according to other higher regulations. Ali Achmad Chomzah stated that land law is the whole of legal regulations that regulate rights and obligations that stem from the rights of individuals and legal entities regarding the land they control or own.<sup>2</sup>

In order to provide legal certainty to holders of land rights, an affirmation of the strength of the certificate is given. The impact of the practical meaning as long as it has not been proven, on the contrary, physical data and juridical data in legal actions and disputes in front of the court must be accepted as correct data (Susilo & Roesli, 2018). Other individuals or legal entities cannot claim land that has been certified on behalf of another person or other legal entity if for 5 years from the date of issuance it does not file a claim in court.

The implementation of legal guarantees and certainty on land rights is carried out by registering land by taking measurements, mapping land and administering land rights is a legal relationship between a person or legal entity and something that creates authority over the object of the land and forces others to respect it as a result of ownership. Article 19 The Basic Agrarian Law assigns the government to carry out rechts land registration. Land registration functions to find out the status of land parcels, who owns it, what rights, how wide it is, what it is used for. To obtain legal power a series of systematic land registration activities, material truth submission, proof of physical data and juridical data on land rights, or other matters needed as a basis for land registration rights, and/or history of the origin of land ownership, buying and selling, inheritance, not apart from the applicable laws and regulations.

Land tenure is a rare natural resource that is permanent in nature and is used to fulfill various human needs for housing, agriculture, plantations and industrial activities which require the availability of land. As a developing country, Indonesia which has a large population, experiences land problems that usually lead to conflicts between rights holders and others. The conflict is usually about compensation for land to be used for development, land ownership disputes and many complex problems.

Among these land tenure, land rights are the most desirable land rights because the property rights have several characteristics as described in Article 20 of the UUPA<sup>3</sup>:

<sup>&</sup>lt;sup>3</sup> Urip Santoso., *Op.Cit.*, h. 23.



<sup>&</sup>lt;sup>2</sup> Urip Santoso, *Hukum Agraria Kajian Komprehensif*, Kencana Prenada Media Group, Jakarta, 2012, p. 92-93

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1. Hereditary rights, meaning that land rights can continue as long as the owner is still alive and if the owner dies, his rights is continued by his heirs as long as they fulfill the conditions as the subject of ownership rights.

2. Strongest right, meaning land rights are stronger than other land rights, do not have a certain time limit, IS easily maintained from other parties, and not easily removed.

3. Fulfilled rights, meaning that land rights provide the most extensive authority to those who have rights compared to other rights. Property is the parent right of other rights, meaning that a landowner can give land to another party with rights that are less than property rights. For example, renting out, giving to other people with the right to use the building or the right to use, as well as burdened with mortgage rights.

With these advantages, many people are trying to own property rights. However, not everyone can own property rights, because the subject of limited property rights as stipulated in Article 21 of the UUPA:

- 1. Only Indonesian citizens can have ownership rights.
- 2. The government determines legal entities that can have ownership rights and conditions.
- 3. Foreigners who after the enactment of this Law obtain ownership rights due to inheritance without inheritance or a mixture of property due to marriage, as well as Indonesian Citizens who have ownership rights and after the enactment of the Law they lose their citizenship must give up that right within one the year since the right was obtained or the loss of citizenship. If after the past period of time the ownership rights have not been released, then the rights will be deleted because the law and land fall on the state, provided that the rights of the other parties that burden them continue. If someone besides his Indonesian citizenship has foreign citizenship, he cannot own land with ownership rights and for him the provisions in paragraph 3 of this article apply.

The National Land Agency (BPN), in handling land issues is still passive / waiting for the wishes of the parties to the dispute, so that it seems less concerned about the interests of the community. Therefore, to anticipate increasingly complex land issues and to minimize the emergence of land conflicts in the community, the National Land Agency (BPN) in the future is required to be more proactive in resolving land conflicts in accordance with the Eleven Agenda of the Indonesian National Land Agency. Therefore, in Article 19 of Law Number 5 Year 1960 concerning Basic Agrarian Regulations, it is stipulated that to ensure legal certainty by the government, land registration is carried out throughout the territory of the Republic of Indonesia. The National Land Agency of the Republic of Indonesia (BPN-RI) based on Presidential Regulation Number 10 of 2006 concerning the National Land Agency, assigned to carry out government affairs in the land sector is directly responsible to the president. Land registration



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activities in 5 (five) decades carried out through various program activities both sourced from the State Budget (APBN) and those sourced from public funds (Non-Tax State Revenues) from 1961 until now have only been able to carry out land registration as much as  $\pm$  44 million fields of  $\pm$  100 million plots of land throughout the territory of the Republic of Indonesia.

Land registration also depends on the state budget, available registration officers, available equipment and community awareness of holders of land rights. The government only subsidizes land registration fees to applicants for land registration. Land registration whose costs are subsidized by the government is the National Agrarian Operations Project and systematic land registration through adjudication. After 2015 the government changed the name of the PRONA Activity (National Agrarian Project) to Complete Systematic Land Registration (PTSL) which was implemented starting in 2015 and is still ongoing as one of the National Priority Programs Legalization of assets stipulated in the BPN-RI Strategic Plan by Regulation Head of the National Land Agency of the Republic of Indonesia Number 7 of 2010. PTSL activities in principle are the first land registration activities in the framework of issuing certificates of land rights, especially for people from the weak to middle economic groups. Participants in PTSL activities are prioritized for the people from the weak to middle economic groups as a form of the government's partisanship in this case BPN towards low-to-middle income people.

PTSL activities are in principle the first registration activities, which aim to provide firsttime registration services with an easy, simple, fast and inexpensive process in order to accelerate land registration throughout Indonesia by prioritizing poor/disadvantaged villages, fertile or developing agricultural areas.

Considering the PTSL program implementation is an activity of the Land Office related to other Agencies: (Mojokerto City Government, Head of Sub-District and local Village Head, Applicant/village community where the PTSL program is implemented) then success requires good coordination and performance.

The certificate of land rights provides legal certainty over the land that it has, minimizes the occurrence of disputes, conflicts and land matters, increases the value of its assets and can be used as collateral for loans to banks to increase business capital. Penertipikatan land in bulk through PTSL activities is one of the Land activities that receive a positive response from the community.

To be able to meet the completion targets on time and on target and to achieve optimal performance and financial results in PTSL activities, it is necessary to make improvements and changes to the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 6 Year 2018. With improvements and changes to the Technical



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Guidelines the PTSL Activity is expected not to cause a variety of interpretations in the implementation.

### 2. RESEARCH METHODS

### 2.1. Research Type

The type of research used in this thesis is normative legal research in order to find the truth of coherence. In such a case it is not the empirical facts to be provided, yet the conformity between something that is to be studied with values or provisions/rules or principles that are used as references. In the method of law approach, the researchers need to understand hierarchies and principles in the laws and regulations. In the study conducted by reviewing Law number 5 of 1960 on Basic Agrarian Basic Regulations, Government Regulation Number 24 of 1997 on Land Registration, along with Objects Related to Land, and Minister of Agrarian and Spatial Planning/Head of Land Agency National Republic of Indonesia Number 6 of 2018.

### 2.2. Approach to the Problem

The forms of the problem approach used are statute approach and Conceptual approach. Conceptual approach is carried out when researchers do not move from the existing legal rules; this because there is no legal rule for the problem at hand<sup>4</sup>. The conceptual approach used in this writing is to examine legal understandings, legal concepts, and legal principles relevant to the field of Land and Land Registration.

### **3. DISCUSSION**

### 3.1. The Land Registration Object of PTSL with status of Petok D or Letter C.

Land ownership in Indonesia is usually given from generation to generation. In the past the arrangement for ownership of property was not too strict in its regulations, thus, various land documents appeared, one of which was Letter C. Letter C is proof of ownership of land by someone in the village office. Letter C in the form of this book itself functions as a tax withdrawal record and information about land identity in the colonial era. But in the present, Letter C is still often used as a land ownership identity and is proof of land sale and purchase transactions. The land data contained in Letter C itself is said to be incomplete because the inspection and measurement of the land are always carried out carelessly.

In PTSL program, land objects do not have to be from Letter C for there are several kinds of old land rights that apply before the UUPA was born, for example Petok D, etc. The way of proof with the applicant submits an application to the office of the outreach / village, namely a

<sup>&</sup>lt;sup>4</sup> *bid.*, p. 177



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certificate of land history, is one of the written evidences to show ownership of the land. The proof of ownership basically consists of proof of ownership on behalf of the rights holder at the time of the enactment of Law Number 5 Year 1960 on Basic Agrarian Principles Regulations ("UUPA") and if such rights then change, evidence of successive transfer of rights reaches the hands of the rights holder at the time of bookkeeping of rights.

### 1. Proof of Rights and Bookkeeping

Land registration activities for the first time include:

a. collection and processing of physical data;

b. proofing of rights and books;

- c. issuance of certificates;
- d. presentation of physical data and juridical data;

e. storage of general lists and documents.

### 2. Proof of New Rights

For the purposes of registering rights:

a. new land rights is proven by:

1. stipulation of the granting of rights from the authorized official to grant the rights in question according to the applicable provisions if the granting of said rights originates from State land or management rights

2. the original PPAT deed that contains the granting of such rights by the holder of the right to the recipient of the rights concerned when regarding the right to use the building and the right to use the land of ownership;

a. management rights is proven by the stipulation of granting management rights by the authorized official;

b. *waqf* land is proven by *waqf* pledge deed;

c. ownership rights to apartment units is proven by a deed of deed;

d. granting mortgage rights is proven by the deed of granting rights.

### 3. Proofing of Old Rights

For the purposes of registering rights, land rights originating from the conversion of old rights as evidenced by evidence of the existence of such rights in the form of written evidence, witness statements and/or statements related to the level of truth by the Adjudication Committee in systematic land registration or by the Head of the Land Office in sporadic land registration, it is considered sufficient to register the rights, rights holders and rights of other parties who burden them.

In the event that there is no or no complete availability of evidentiary instruments, the bookkeeping of rights can be carried out based on the fact that the physical control of the land in



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question is 20 (twenty) years or more consecutively by the registration applicant and its predecessor, with the following conditions:

a. the mastery is carried out in good faith and openly by the person concerned as entitled to the land, and strengthened by the testimony of a person who can be trusted.

b. the mastery both before and during the announcement is not disputed by the customary law community or the village / kelurahan concerned or other parties.

In order to assess the correctness of evidence, juridical data collection and research is conducted on the relevant land area by the Adjudication Committee in systematic land registration or by the Head of the Land Office in sporadic land registration.

The results of the research on evidence are set forth in a questionnaire determined by the Minister. The written evidence intended can be in the form of:

a. grosse eigendom rights deed issued based on Overschrijvings Ordonnantie (Staatsblad. 1834 27), which has been affixed with a note, that the eigendom rights concerned are converted into ownership rights; or

b. grosse eigendom rights deed issued based on Overschrijvings Ordonnantie (Staatsblad. 1834 27) since the enactment of the UUPA until the date of land registration was carried out according to Government Regulation Number 10 of 1961 in the area concerned; or

c. letter of proof of ownership issued based on the Self-Regulating Regulations concerned; or

d. certificate of ownership issued based on Minister of Agrarian Regulation Number 9 of 1959; or

a. a decree granting ownership rights from the competent official, both before and since the enactment of the LoGA, which is not accompanied by an obligation to register the rights granted, but has fulfilled all the obligations referred to therein; or

b. deed of transfer of rights made under the hands affixed with a testimony by the Head of Customary / Village / Kelurahan Head made prior to the enactment of this Government Regulation; or

c. deed of transfer of land rights made by PPAT, whose land has not been recorded; or

d. waqf pledge made before or since the Government Regulation Number 28 of 1977 emerged; or

e. minutes of auction made by the authorized Auction Officer, whose land has not been recorded; or

f. letter of appointment or purchase of land replacement plot of land taken by the Government or Regional Government; or

g. petuk land/landrente tax, *girik, pipil, kekitir* and Verponding Indonesia before the enactment of Government Regulation Number 10 of 1961; or

h. land history statement made by the Land and Building Tax Service Office; or



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i. other forms of written evidence with any name as referred to in Article II, Article VI and Article VII Provisions on UUPA Conversion.

In the event that the written evidence is incomplete or non-existent, proof of ownership can be carried out with a witness statement or statement of the person who can be trusted in the opinion of the Adjudication Committee in systematic land registration or Head of the Land Office in sporadic land registration. What is meant by witness is a person who is capable of giving testimony and knowing the ownership. You can find out more about systematic and sporadic land registration, see the article on mass Land Registration.

### 3.2. Certificates of PTSL Ownership Rights can guarantee Legal Certainty

The objectives of the PTSL program are to accelerate the provision of legal certainty, and legal protection of community land rights in a sure, simple, fast, smooth, safe, fair, equitable, and open and accountable manner, so as to improve the welfare and prosperity of the community as well as reduce the and prevent disputes in land conflicts. Due to the law of PTSL, it provides administrative certainty in the names of rights holders registered in the certificate.

In addition to guarantee legal certainty, the state is also obliged to provide protection for land rights both individually and communally. All of that can be obtained with a certificate which is the strongest evidence of the ownership of one's land. In addition, there are many benefits that can be felt by the community and the government for the implementation of Asset Legalization through PTSL. One of them is the existence of their rights, and the government can complete the land database, so that one of the land chess is realized, namely orderly land administration.

Providing certificates in the framework of government programs can also systematically improve and supervise the implementation of land reforms, supervise absentee land, and prevent fragmentation due to inheritance or supervision of land accumulation on one person. Meanwhile, in terms of realizing a complete village picture on the PTSL program, the Adjudication Committee continues to measure all plots of land in one location designated by the Head of the Land Office. However, not all land plots that have been measured can be issued. All of that goes back to land categories at PTSL locations according to Article 25 Number 2 Minister of Agrarian Regulation No. 12 of 2017.Proses pengurusan berkas hingga penerbitan sertifikat dalam program PTSL tidak menggunakan waktu yang sangat singkat, dengan seleksi dan pemeriksaan data oleh Satgas Fisik dan Satgas Yuridis diharapkan mampu meminimalisir terjadinya kesalahan data, yang dapat memicu konflik persengketaan.

Article 29 Minister of Agrarian Regulation No. 12 of 2017:



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"In the event of administrative errors in the issuance of certificates of land rights, improvements shall be made based on Minutes of Improvement of Administrative Errors in accordance with the provisions of the laws and regulations."

Although there are very rare cases, the BPN can cancel the issuance of certificates of land rights. Previously there was a statement signed by the rights holders, who were willing to accept any sanctions if in the future there was an error in the validity of the data written, when registering land.

Meanwhile, the rights obtained as previously described can be requested for cancellation, both by interested persons and by the state. The basis that can be used is due to an administrative legal flaw, as in Article 106 of the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 9 of 1999 stated that what is meant by administrative legal disability is:

1. Error in procedure;

- 2. Error in the application of laws and regulations;
- 3. Error subject matter;
- 4. Error object rights;
- 5. Error in types of rights;
- 6. Error in Extensive calculation;
- 7. Overlapping land rights;
- 8. Incorrect Physical or juridical data;
- 9. Other errors that are administrative in nature.

The certificate of land rights that have been issued and can still be canceled is a result of a system of negative public land registration applied in Indonesia. This system is used to protect actual rights holders, so that the right-holders will always be able to reclaim their rights that have been registered in the name of anyone. In addition, in this system, the certificate issued is a proof of strong land rights.2 In line with the nature of proof of the certificate as proof of rights contained in article 32 paragraph 1 Government Law No. 24 of 1997, that the land registration publication system adopted in Indonesia is a negative publicity system, namely a certificate is only a letter of proof of a strong right and is not a proof of absolute rights. This means that the physical data and juridical data contained in the certificate have legal powers that must be accepted by the judge as true information as long as there is no other evidence that proves otherwise. Thus, it is the court that can decide which evidence is correct and if it is proven that the certificate is incorrect, then the changes and corrections are properly carried out.

Boedi Harsono argues that the system we use is not a pure negative system, but a negative system with positive tendencies. The negative definition meant is that the information available if



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it turns out to be incorrect can still be changed and corrected. Although the negative system is used, the registration officers are not as passive as those adopted in the positive publication system. This means that they do not take for granted what is put forward, and said by the party requesting registration for the first time in the bookkeeping, as well as the registration or recording of changes, prior research must be carried out to prevent mistakes.

Provisions of article 32 paragraph (1) PP No. 24 of 1997 has a weakness because the state does not guarantee the truth of the physical data and juridical data presented and there is no guarantee for the certificate owner because at any time he will get a claim from another party who feels disadvantaged over the issuance of the certificate. To cover up these weaknesses, article 32 paragraph (2) is made which can make a certificate as an absolute proof if it meets cumulative elements, they are:

1. Certificates are issued legally on behalf of a person or legal entity;

2. Land acquired in good faith;

3. Land is controlled in real terms;

4. Within 5 years of the issuance of the certificate no one has filed an objection in writing to the certificate holder and the Head of the local Regency/ City Land Office or has not filed a claim to the court regarding land tenure or certificate issuance.

Meanwhile, in terms of resolving land issues, it can be related to Civil Law, Criminal Law and State Administrative Law. As in the case of cases of ownership disputes in relation to Civil Law, it can be resolved through the BPN as a mediator to carry out the case title. If it does not reach a consensus, the BPN can recommend that a dispute resolution be made in the District Court. Likewise in the case of land grabbing in relation to Criminal Law that can be resolved in the District Court. Then in the case of a lawsuit for the issuance of a certificate of land rights by the BPN it can be done at the State Administrative Court (PTUN), also if found an element of corruption in the case of the issuance of certificates can be reported at the local Prosecutor's Office.

### 4. CONCLUSION

PTSL implementation must be carried out with certainty, simple, low cost, fast, smooth, safe, fair, equitable, and open and accountable in accordance with the aim of running effectively. However, it is not efficient because BPN has limited facilities and infrastructure, so measurement errors still occur and image mapping. However, even though the process is simplified and the cost is cheap, there are still people who do not register their land through PTSL due to short socialization time. The legal consequences of issuing land certificates in PTSL program are as proof of legal ownership. While the certainty of guaranteed rights, the certificate is not an absolute



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evidence in court cases and can be sued both in civil, criminal, and administrative terms because the land registration system in force in Indonesia is a negative land registration system.

### RECOMMENDATION

One of the supports for the implementation of the PRONA and PTSL programs by the BPN City of Mojokerto is by adding existing HR personnel, especially for field measurements. Where land owners do not or have not installed their land boundary markings or stakes, it is recommended that the installation of stakes be carried out in the field witnessed by the neighboring border. Systematic land registration needs to be carried out continuously and continuously for all land parcels in the village in full to create orderly land in the entire territory of the Republic of Indonesia.

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