

# Ideal Regulation of Land Registration Using Land Certificate as Evidence Based on Legal Certainty

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## Abstract

The purpose of this study is to find out why the regulation on land registration in Indonesia is not ideal yet and what is the Ideal Regulation of Land Registration Using Land Certificate as Evidence Based on Legal Certainty. This writing method uses a constructivism paradigm, namely a paradigm with an ontology of relativism, a sociological juridical approach method, namely an approach by seeking information through direct interviews with informants empirically first and then proceeding with conducting research on primary data contained in interviews with informants and then strengthening it with studies literature through theoretical steps, the nature of this research is descriptive- analytical where the data is obtained from field data both interviews and/or questionnaires which are carried out by directly observing the competent parties. The result of the study shows that the system has weaknesses and technical constraints, namely in the process of collecting juridical data and physical data of land registration applicants is considered not in accordance with the achievement of targets from the PTSL program, lack of effectiveness of complete systematic land registration in theoretical studies the legal system is influenced by factors of legal substance. As well as suggestions in this writing, namely, the principle of Nemo Plus Juris should be able to better protect owners of land rights, to minimize the occurrence of lawsuits in court, land registration officers from the BPN/Ministry of Agrarian should examine the correctness of physical and juridical data on a plot of land accurately, if the landlord when land certificates act tend not to comply with regulations (not obey/disobey), then a reconstruction of land registration changes can be carried out because they are deemed unable to provide legal certainty and legal protection for holders of land certificates, the effectiveness of law enforcement or application is determined by the performance of BPN as PTSL organizers in maximizing the implementation of the PTSL program, presenting an innovation in e-certificates issuing policies regarding the enforceability of electronic land certificates equipped with hash code security, QR code, and single identity.

**Keywords:** Ideal Regulation, Land Registration, Evidence, Legal Certainty.

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## INTRODUCTION

PPAT has the authority to make deeds regarding the transfer of land rights. In carrying out their duties, land deed officials often face situations that go awry. They have played a role in making deeds to serve the community's needs for land. Even though they have worked professionally, they are still being dragged into legal proceedings under the pretext that the state is holding them accountable for their performance with the people who are in dispute over ownership claims as those entitled to land (Widodo, 2019).

Land disputes are land disputes that occur between individuals, legal entities, or institutions that do not have a broad socio-political impact. Land

disputes can be in the form of administrative disputes, civil disputes, and criminal disputes related to transaction ownership, guarantee registration, utilization, control, and customary rights disputes (Fahmi, 2023).

Land conflicts are land disputes between individual, groups, groups, organizations, legal entities, or institutions that have had a broad socio-political impact. There are also land disputes which are land disputes. The settlement is carried out by a judicial institution or a court decision which is still being asked to handle the dispute at the BPN RI. In 2014, the Ministry of ATR/National Land Agency noted that there were 11,736 land cases that came to BPN-RI from 2010 to 2014. Meanwhile, the number of land cases that

came to BPN-RI in 2014 was 5,878 cases. These cases consisted of 1,927 unresolved cases in 2013 and 3,906 new cases in 2014. Of the 5,878 cases, the number of cases that had been completed by the end of 2014 was 2,910 cases (57.92%) (Berita Jatim, 2023).

This phenomenon indicates that the problem is the responsibility of the state that must be resolved immediately. Of course with the intention that people from various elements, including the PPAT, get a sense of justice. Of course, this must be done through a comprehensive system reform.

Through this research, the author tries to explore the state policy towards PPAT in land registration practices in which it reviews a comparative study of negative and positive publicity land registration systems. It is hoped that this research will later become a trigger for reforming the land system to become more holistic and integrated.

The focus of this research is to reconstruct various legal instruments issued by the state that regulate officials who make land deeds. The mention of PPAT was first mentioned in Government Regulation Number 10 of 1961 concerning Land Registration (State Gazette of 1961 No. 28/ hereinafter referred to as PP No. 10 of 1961) in conjunction with PP No. 24 of 1997. Specifically regarding proof of certificate as proof of rights which is "*strong*" in nature if it cannot be proven otherwise by a third party (there is no lawsuit), not as absolute proof.

Furthermore, in practice, land registration ATR/BPN is assisted by PPAT officials or other officials. In it, there is a mention of the term "*Officer*". Article 19 of this regulation explains that "*Any agreement that intends to transfer land rights, provide a new right to land, mortgage land or borrow money with land rights as dependents, must be proven by a deed made by and before an official appointed by Minister of Agrarian Affairs (PPAT)*". One of the deeds that are the authority of the PPAT is the Sale and Purchase Deed (hereinafter referred to as AJB) as contained in Article 2 paragraph (2) letter a PP Number 37 of 1998 which was renewed based on PP No. 24 of 2016. In providing legal understanding, PPATs are required to work with full responsibility, independence, honesty, and impartiality, as referred to in Article 3 letter (e) of the Code of Ethics for the Association of Land Deed Officials (IPPAT).

PPATs are people who are greatly affected by government policies on land. They are the ones who directly experience the complexities of transferring land ownership and the registration process. Therefore, based on this description, the author is interested in conducting research and examining the problem in a scientific paper titled "*Ideal Regulation of Land*

*Registration Using Land Certificate as Evidence Based on Legal Certainty*" where the main problem discussed in this article is as follows:

1. Why the regulation on land registration in Indonesia is not ideal yet?
2. What is the Ideal Regulation of Land Registration Using Land Certificate as Evidence Based on Legal Certainty?

## METHOD OF RESEARCH

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020).

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010):

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

## RESEARCH RESULT AND DISCUSSION

### 1. Reason Why the Regulation on Land Registration in Indonesia is not ideal yet

The ineffectiveness of complete systematic land registration in the theoretical study of the legal

system is influenced by the factor of legal substance, which in this case is influenced by legal regulations in the land sector. The legal substance in the land sector regulated in the UUPA and the applicable laws and regulations have not been able to encourage public legal awareness. This is because the substance of the UUPA has not succeeded in becoming a tool of social engineering in raising public legal awareness to carry out land registration. As a result, government programs in an effort to accelerate land registration are not running optimally (Munir, 2023).

The substance of Article 23 paragraph (1) UUPA, emphasizes that property rights, as well as any transfers, and building use rights holders and encumbrances with other rights, must be registered according to the provisions referred to in Article 19. This provision explicitly requires that property rights holders register every transfer of ownership rights to land, whether it is a transfer of property rights due to sale and purchase, grants, and so on. However, the provisions of Article 23 paragraph (1) UUPA which are imperative in nature do not have coercive force, because there are no strict sanctions for those who do not register any transfer of rights referred to in the article.

The absence of sanctions for holders of land ownership rights who do not and have not registered their land ownership rights in the UUPA or Government Regulation Number 24 of 1997 concerning Land Registration, causes the provisions of Article 23 paragraph (1) to apply less effectively.

With regard to the effectiveness of the legal substance in the land sector, it can be said that the legal substance in the land sector currently in effect in society (positive law) has not been applied factually, due to the low legal awareness of the community to carry out land registration, either periodically or systematically.

The inapplicability of the Agrarian Law rules formulated in the BAL is because the agrarian law rules do not provide sanctions for holders of property rights who do not register any changes to property rights or building use rights as stated in Article 23 of the BAL. Therefore, even though the UUPA orders owners of land rights to register, and this provision is imperative in nature because it does not have sanctions, the provisions of Article 23 UUPA cannot apply factually or empirically.

The Semarang Regency/City National Land Agency in the implementation of PTSL found various obstacles, both those that came from the BPN Semarang itself (internal constraints) and those that came from outside the institution (external constraints).

The internal and external constraints experienced by the Semarang Regency/City BPN greatly affect the successful implementation of the PTSL program which is currently being held by the government. Based on the results of an interview with one of the District/Semarang BPN's Authorities (2022), stated that:

*"BPN Kota Semarang in implementing the PTSL program found several obstacles, both internal and external obstacles. The internal constraints faced by BPN include the limited staff or officers who run the PTSL program, making it difficult for officers to carry out direct socialization (counseling) with the community. So far, the dominant socialization carried out is by placing banners, while the effective implementation of socialization is by conducting direct counseling to the community (door to door)".*

This statement shows that so far the implementation of the systematic land registration program carried out by the government has been lacking in information. So the systematic land registration program implemented by the government often does not achieve maximum results. Achievement of the government's policy target for complete systematic land registration can be seen from the absorption of the budget used.

Furthermore, Based on the results of an interview with one of the BPN Authorities at the Semarang Regency/City BPN Office, it is known that in 2018 the budget set by the government for the implementation of the PTSL program in the task area of the Semarang Regency/City BPD Office is Rp. 14,704,380,000. Until July 2018, Rp. 536.006.000,-.

Taking into account the absorption of the budget used in organizing PTSL at the Semarang Regency/City BPN, it can be assumed that the performance of the Semarang Regency/City BPD is still quite low. In implementing government programs, it is true that there is no obligation for certain government institutions or agencies to spend a predetermined budget, but a low budget absorption indicates that the performance of government officials has not been maximized in carrying out programs or policies that have been determined in accordance with the initial planning.

Another factor that influences the implementation of the PTSL program at the Semarang Regency/City BPN Office is the legal culture, which is related to the problem of the low level of public legal awareness. This can be seen from the results of an interview with one of the Semarang Regency/City BPN staff, who stated that *"Many people do not understand the importance of land certificates, and the community*

*feels burdened by BPHTB payments, even though the local government has reduced the cost of BPHTB payments."*

The statement made by one of the BNP staff above provides an understanding that the low enthusiasm of the community in carrying out land registration is an indicator that the community's legal awareness has not yet been formed about the importance of land registration.

## **2. Ideal Regulation of Land Registration Using Land Certificate as Evidence Based on Legal Certainty**

Along with the rapid development of the times in the current era of globalization which is marked by the growing development of science, technology, and information, of course, various aspects in the field of government need to make adjustments. There are laws and regulations that serve as the basis for accommodating these adjustments, including the Law of the Republic of Indonesia Number 19 of 2016 concerning Electronic Information and Transactions whose technical rules are regulated later through the Government Regulation of the Republic of Indonesia Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions. Article 1 Numbers 4 and 5 of this Regulation contain an article regarding electronic system operators, where there are public electronic system administrators who are state administrators or institutions appointed by state administrators. So in this case, state administration based on an electronic system can be applied to various aspects of the government sector, including the land sector, and can even be applied to the mechanism of the land registration system and its outcomes.

The mechanism for a land registration system based on an electronic system is then regulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 1 of 2021 concerning Electronic Certificates. The output of this system is in the form of electronic documents. The meaning of electronic documents as regulated in Article 1 Number 2 of the Ministerial Regulation is any electronic information that is created, forwarded, sent, received, or stored in analog, digital, electromagnetic, optical, or the like, which can be seen, displayed, and/or heard through a computer or Electronic System, including but not limited to writing, sound, pictures, maps, plans, photographs or the like, letters, signs, numbers, access codes, symbols or perforations that have meaning or meaning or can be understood by people who able to understand it (Toebagus, 2022). In this case, the intended electronic documents are in the form of electronic certificates or e-certificates. Data, electronic information, and/or electronic documents are data of rights holders, physical data, and juridical data of land parcels that are valid and have their

authentication maintained which are stored in an electronic system database. As for its implementation, it starts with data collection, data processing, and data presentation. The results or outputs obtained are divided into two, namely electronic documents issued through an electronic system with validation using an electronic signature and documents that are transferred by media into electronic documents that are validated by an authorized official or appointed official and given a digital stamp through an electronic system.

The implementation of this rule will then have a direct effect on land parcels that will be registered and those that have been registered. As stipulated in Article 12 of this Government Regulation, the land whose rights have been assigned to become land rights, management rights, ownership rights to apartment units, mortgage rights, or waqf land is registered through an electronic system and issued e-certificates. Then as proof of ownership of the rights to the rights holder/nazir, an e-certificate is given, and access to the e-certificate is on the electronic system. Although there are exceptions to the granting of this e-certificate, namely if the physical data or juridical data are incomplete or are still in dispute. Regarding land that has been registered, the certificate will be replaced with an e-certificate through a request for land registration data maintenance services with a note that the physical data and juridical data in the land book and certificate are in accordance with the physical data and juridical data in the electronic system.

At the level of legislation, the land registration system through the electronic system already has a concrete and comprehensive legal basis (Widodo, 2018). Nonetheless, the meaning of the implementation of a rule does not only reach the concreteness and comprehensiveness of the rule but includes the readiness of the various parties who will then be involved. Both are related to the organizers of the electronic land registration system, namely the Ministry of ATR/BPN and the general public who will then register or change their land certificates. Since the Ministerial Regulation regarding e-certificates was enacted on January 12, 2021, the Ministry of ATR/BPN as well as various print and electronic media have started reporting and disseminating information regarding this rule, it is hoped that this will become a means for the public to gain knowledge and insight regarding the implementation of e-certificates this.

The ATR/BPN Ministry as the organizer of the electronic land registration system has also stated its readiness, although the implementation will be carried out in stages. As disclosed by the Minister of ATR/BPN Sofyan Djalil (Detik, 2021), the government has just implemented pilot projects in several areas and is prioritizing land and assets owned by government agencies and state-owned enterprises (BUMN) to be



converted into electronic land certificates. Although later the implementation of the system will be carried out in stages, based on interviews that the author conducted with one of the Semarang Regency/City BPN staff which has been explained by researchers in Chapters III and IV, the preparations made by the Ministry of ATR/BPN have almost reached 100 percent, where the process carried out currently in the process of validating and uploading data in the land book which will then be included in the Ministry of Agrarian Affairs/BPN's Land Activity Computerization (KKP) application.

Based on the simulations that have been carried out by the Ministry of ATR/BPN, basically, there are no potential obstacles to the enforcement of this rule, so the main focus of the Ministry is to accelerate the validation process and upload it to the KKP application. Regarding people who already have analog land certificates (currently used land certificates) who will change their certificates to e-certificates absolutely no fees are charged because the change is borne by the State, where the replacement process is carried out in stages based on requests for data maintenance by the applicant. The e-certificate given to the applicant can provide various benefits to the community such as easy access to obtain digital data and will be free from falsification of land certificates; this will then become the basis for guaranteeing legal certainty regarding ownership of land rights for the community.

## CONCLUSION

Based on the results of the research, the following conclusions can be drawn:

1. The weaknesses that are found by the author are namely, in the negative system, where the government does not guarantee the correctness of the contents of the public registers held in the registration of rights, however, there is still exists an advantage of the negative system is that the registration of the deed of transfer of rights can be carried out smoothly because it is enough to obtain formal verification. In a negative system or a negative publication system, always use the registration of deeds system, where the Land Registration Officer does not carry out a test (subject test) on the correctness of the data listed in the deed (passive).
2. The Ideal Land registration proposed by the author is by doing a legal reconstruction in order to provide legal certainty and legal protection for holders of land certificates, the effectiveness of law enforcement or application is determined by the performance of BPN as PTSL organizers in maximizing the implementation of the PTSL program,

presenting an innovation in the form of e-certificates issuing policies regarding the enforceability of electronic land certificates equipped with hash code security, QR code, and single identity.

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