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## Land registration system in the perspective of legal security for land rights certificate holders

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### Abstract

This research aims to find a land registration system that has legal certainty for holders of land title certificates in Indonesia. Indonesia adheres to a negative publication system in land registration activities, where the state does not guarantee the correctness of the data presented in the certificate. This briefly illustrates the condition that legal certainty is not guaranteed in land registration activities, so that many parties want the government to change the land registration policy towards Positive Stelsel. The author is interested in studying further how the land registration system can provide legal certainty for holders of land title certificates? and How is an appropriate land registration system implemented in Indonesia to provide legal certainty to land title certificate holders? This research uses a normative juridical research type, using a statutory approach, a conceptual approach and a comparative approach. The results of the research show that the negative publicity system has a positive tendency which is applied in the land registration system in Indonesia as a cause of inconsistent legal protection and legal certainty for holders of land title certificates as strong evidence, where the State does not guarantee the correctness of recorded physical and legal data in the evidence document. The role of the state as regulated in Article 33 Paragraph (3) of the 1945 Constitution cannot be applied to provide legal protection and legal certainty to land title certificate holders who have a positive publication system. The most ideal positive publication system is implemented in the land registration system in Indonesia which provides legal protection and legal certainty to holders of land title certificates because proof of title is strong evidence and the State guarantees the correctness of physical data and legal data recorded in the evidence document.

**Keywords:** land registration system, certificate holders, legal certainty

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### Introduction

Land for human life and livelihood is a "conditio sine qua non". The development of human relations with the land has become increasingly extensive and complex, starting from the individual stage towards the land to the patterns created by the state <sup>[1]</sup>. In Indonesia, constitutionally the issue of land as the surface of the earth is regulated in Article 33 paragraph (3) of the 1945 Constitution, which reads: "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people". Article 33 paragraph (3), is closely related to the previous paragraphs and their explanations, even if viewed from its position, this article is closely related to the issue of the welfare of the Indonesian people. Both in the verse and in the explanation, it can be stated that control of land as the surface of the earth by the state is in order to achieve the greatest prosperity of the people in order to achieve the goals of the state as stated in the fourth paragraph of the Preamble to the 1945 Constitution. Control of land by the state is important because land is the mainstay of people's prosperity, so it is necessary to prevent control of land by certain groups which can lead to oppression and extortion of the people.

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<sup>1</sup> Boedi Harsono, "Aspek Yuridis Penyediaan Tanah," *Jurnal Hukum & Pembangunan*, Vol.20, No. 2 (1990): 155-170.

The condition of agrarian law in Indonesia is in a situation of agrarian law dualism. The dualism of agrarian law is characterized by the enactment of colonial (Dutch) laws in the field of land and customary law as the original law of the Indonesian nation.

This condition of dualism in agrarian law lasted for 15 years after independence so that in the end it became the background for the government to make Article 33 paragraph (3) of the 1945 Constitution the philosophical basis for enacting Law Number 5 of 1960 concerning the Basic Agrarian Regulations of the 1960 State Gazette Number 104 which is commonly abbreviated as UUPA<sup>[2]</sup>. The position of the UUPA is to eliminate the dualism of agrarian law in Indonesia, one of the main principles of which is the unity of agrarian law for all regions of the country<sup>[3]</sup>. In connection with the third objective of the promulgation of Law Number 5 of 1960, namely to lay the foundation for legal certainty, Article 19 of the UUPA regulates land registration. This land registration is organized to regulate legal relations between subjects and objects of land plots<sup>[4]</sup>.

The aim of promulgating the UUPA as explained in the decision provisions and Article 5 of the UUPA is:

- a. Lay the foundations for the preparation of national agrarian law, which will be a tool to bring prosperity, happiness and justice to the country and the people, especially the farming people, within the framework of a just and prosperous society. (National basis).
- b. Laying the foundations for establishing unity and simplicity in land law (the basis for unity and simplicity).
- c. Lay the foundations for providing legal certainty regarding land rights for the people as a whole. (Basis of legal certainty).

One of the objectives of the UUPA is an effort to provide legal certainty for all people regarding their land rights. Considering the importance of legal certainty regarding land control in the life of the state, agrarian legislation in Indonesia regulates land registration in order to guarantee legal certainty for holders of the land rights in question. In order to guarantee legal certainty for holders of land rights, according to the law a "certificate" is a strong means of proof so that the owner is given legal certainty and legal protection. With this certificate, the existence of land rights holders will be guaranteed<sup>[5]</sup>.

The registration system for land rights in order to obtain legal certainty is of course also related to the land registration publication system. This means that legal certainty and legal protection as one of the objectives of land registration depend on the land registration publication system adopted by a country. Indonesia as a country adheres to a negative land registration publication system. A negative registration system means that the government does not guarantee the correctness of the data presented in land certificates and books.

The Basic Agrarian Law instructs the government to register land, so it is very clear that the government in this case is obliged to guarantee legal certainty and legal protection.

Article 19 paragraph (1) of the Basic Agrarian Law states that to guarantee legal certainty the government will carry out land registration throughout the territory of the Republic of Indonesia according to the provisions regulated by government regulations. Then paragraph (2) letter c, in order to realize the implementation of legal certainty that "Providing letters of proof of rights, which are valid as a strong means of proof". The government issued implementing regulations to make this happen, namely by issuing Government Regulation Number 10 of 1961 concerning Land Registration which has now been amended by Government Regulation Number 24 of 1997 concerning Land Registration which was then amended by Government Regulation No. 18 of 2021 concerning Management Rights, Rights to Land, Flats, and Land Registration. Article 1 number 1 Government Regulation Number 18 of 2021, what is meant by Land Registration is a series of activities carried out by the Government continuously, sustainably and regularly, including the collection, processing, bookkeeping and presentation and maintenance of physical and juridical data, in the form of maps and List of plots of land, above-ground space, underground space and apartment units, including the provision of letters of proof of title to plots of land, above-ground space, underground space for which there are already existing rights and ownership rights to the units. Flats and certain rights that encumber them.

The land registration system adopted by Indonesia is a negative publication system with a positive tendency. This system uses a rights registration system, meaning that the physical data and juridical data on the land are considered correct as long as no one disputes the truth of the data. That the purpose of establishing government regulations regarding land registration is to provide legal certainty for holders of land title certificates. The principle of the *rechtsverweking* institution is outlined in Article 32 paragraph (2) of Government Regulation Number 24 of 1997 which states that in the event that a certificate of land has been legally issued in the name of the person or legal entity that acquired the land in good faith and actually controls it, then Other parties who feel they have rights to the land can no longer demand the implementation of these rights if within 5 years of the issuance of the certificate, they do not submit a written objection to the certificate holder and the Head of the Land Office concerned or do not file a lawsuit with the Court regarding control of the land or issuance of the certificate<sup>[6]</sup>. However, this institution is not effective because Article 19 paragraph (2) letter c states that the provision of proof of rights is provided, which acts as a strong means of proof. The sentence as a strong means of proof, here confirms that the land registration system adheres to a negative publicity system, where the subject of rights whose name has been registered, it is still possible for objections to be raised by parties who feel their rights have been taken. So this *rechtsverweking* institution cannot be implemented because contrary to Article 19 paragraph (2) letter c of the Basic Agrarian Law.

Talking about registration of land rights in order to obtain

<sup>2</sup> Urip Santoso, *Hukum Agraria Hak-Hak Atas Tanah*, (2005),h.85.

<sup>3</sup> Parlindungan, *Komentar Atas Undang-Undang Pokok Agraria*, (Mandar Maju, Bandung: 2008), h. 29.

<sup>4</sup>Prama Widyandugraha, "Tinjauan Normatif Pendaftaran Tanah Sistematis Lengkap Dikaitkan dengan Pembentukan Peraturan Perundang-Undangan", *Jurnal Bina Mulia Hukum*, Vol. 3, No. 2, (2019), h. 209

<sup>5</sup> Harris Yonatan Parmahan Sibuea, "Arti Penting Pendaftaran Tanah Untuk Pertamakali", *Jurnal Negara Hukum*, Vol 2, No. 2, (2011), h. 289.

<sup>6</sup> Arie Lestario, Erlina, Sistem Pendaftaran Tanah yang memberikan Perlindungan Hukum Bagi Pemegang Sertifikat Hak atas Tanah di Indonesia, *Notary Law Journal*, Vol 1 Issue 1 (2022),h.1-30

certainty and this legal protection is of course also related to the land registration publication system. This means legal certainty and legal protection as one of the objectives of land registration depending on the land registration publication system adopted by a country. Indonesia as a country adheres to a negative land registration publication system. Registration system negative means the government does not guarantee the correctness of the data presented in the certificate and land book.

This negative publication system is considered by some groups to provide no guarantees legal certainty for certificate holders. Many people think that the publication system negative is not as ideal as the positive publication system implemented by developed countries. This matter because it is considered that the negative publication system does not provide legal certainty so potentially giving rise to disputes. Based on the description above, the author is interested in reviewing and studying more deeply, so the first problem formulation is how is the land registration system that can provide legal certainty for holders of land title certificates? and How is the land registration system implemented in Indonesia to provide legal certainty to holders of land title certificates?

### Research Methods

The type of research used in this research is normative juridical research, namely legal research originating from library research using primary legal materials and secondary legal materials. According to Morris L. Cohen, legal research is a process of obtaining government legal rules that are applied in people's lives. Legal research can be carried out in several types, namely doctrinal research, reform-oriented research, theoretical research and fundamental research [7]. The type of research used in this research is the norm conflict research type, where lower regulations conflict with higher regulations. In connection with the type of research used is normative juridical, the writing of this research was carried out using a statutory approach. Examining all statutory regulations relating to the legal issues being handled. The conceptual approach departs from the views and doctrines that have developed in legal science" and also through literature and other reading materials as supporting theories for the discussion to facilitate this research.

### Discussion

#### 1. Land Registration System That Can Provide Legal Certainty for Land Rights Certificate Holders

The important role of land for humans needs to be supported by providing legal certainty and guarantees for land areas controlled by the community and also supported by provisions written law, complete and clear in content regarding the regulation of land ownership. One instrument that contains juridical data and physical data on a plot of land is a certificate. A certificate is proof of strong rights held by a legal subject whose ownership is recognized as being over a plot of land registered in their name, unless it can be proven

otherwise by evidence and court decisions that have permanent legal force.

In the 1945 Constitution Article 28 D Paragraph (1) states that "Everyone has the right to recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law" (1945 Constitution of the Republic of Indonesia). In Article 3 Paragraph (3) of the 1945 Law, the government's authority in regulating the land sector emphasizes that the earth, water and natural resources contained therein are controlled by the state to be used for the greatest prosperity of the people in the future, which is confirmed in Law Number 5 1960 concerning Basic Regulations on Agrarian Principles (State Gazette 1960-104) or also called the Basic Agrarian Law (UUPA). This can be seen in various government regulations, presidential decrees, presidential regulations, and regulations issued by heads of technical agencies in the land sector [8].

One of the objectives of land registration as stipulated in article 3 of Government Regulation Number 24 of 1997 concerning Land Registration is to provide legal certainty and legal protection to holders of rights to a plot of land, apartment units and other registered rights so that they can easily prove himself as the holder of the rights in question. To provide legal certainty and legal protection, the holder of the rights in question is given a certificate of land rights [9]. Even though it has received recognition in the UUPA, the certificate does not guarantee legal certainty for the owner because the regulation itself provides an opportunity where as long as there is another party who feels they own the land, they can sue the party whose name is listed on the certificate in a civil manner to the General Court, or sue the Head of BPN/Head of the Land Office concerned to the State Administrative Court, or a lawsuit involving the technical administration of its publication [10].

Ownership of land rights by a person by a person or legal entity must be proven. Proving ownership of land rights is carried out or shown using various types of evidence. However, the strongest proof is through a land certificate which is the strongest proof of ownership of land rights mentioned in Article 19 paragraph (2) letter c UUPA, namely the certificate as a strong means of proof, namely the physical data and juridical data contained in the certificate are considered true as long as it cannot be proven otherwise by other evidence which can be in the form of a certificate or other than a certificate. To obtain a land certificate, it is certain that the land must be registered with the Land Office. Jan Michiel Otto believes that legal certainty must meet the following conditions: Having clear and consistent legal rules, in government agencies consistent legal rules are applied, submissive and obedient to them, the public must adapt their habits to these legal rules, independent judges, not take sides and apply the rules of law consistently and be observant in resolving legal disputes and concrete court decisions [11]. Land registration is a prerequisite in efforts to organize and regulate the allocation, control, ownership and use of land, including to resolve various land problems. Land registration

<sup>7</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, Cetakan VI (Jakarta: Prenada Media Group, 2020),h.56

<sup>8</sup> Hadisiswati, I. (2014). Kepastian Hukum Dan Perlindungan Hukum Hak Atas Tanah. *Ahkam: Jurnal Hukum Islam*, 2(1). <https://doi.org/10.21274/ahkam.2014.2.1.118-146>

<sup>9</sup> I Gusti Agung Dwi Satya Permana I Ketut Sandi Sudarsana, *Kepastian Hukum Sertifikat Hak Milik Atas Tanah Sebagai Bukti Kepemilikan Bidang Tanah*,

<sup>10</sup> Rusmadi Murad, *Administrasi Pertanahan Pelaksanaannya dalam Praktik*, Cetakan I, (Mandar Maju, Jakarta, 1997), h. 46

<sup>11</sup> Adrian Sutedi, *Sertifikat Hak Atas Tanah*. (Jakarta: Sina Grafika,2012),h.34

is intended to provide certainty of rights and legal protection for holders of land rights by proving land certificates, as an instrument for structuring land control and ownership and as an instrument for controlling land use and utilization<sup>[12]</sup>.

The purpose of Land Registration as stipulated in Article 19 UUPA paragraph (1) states that the basis for land registration is to obtain legal certainty, the Government shall carry out land registration throughout the territory of the Republic of Indonesia in accordance with the provisions regulated by government regulations and paragraph (2) the series of land registration, namely measuring, mapping, land bookkeeping, registration of land rights as well as the transfer of these rights and the provision of certificates of proof of rights which act as authentic evidence (Basic Agrarian Law).

Holders of rights to registered land will be given proof of rights called a certificate as a result of the land registration process. A certificate is a single sheet of document that contains the legal and physical data required for a plot of land registered in accordance with Government Regulation Number 24 of 1997. In Indonesia, land registration follows a negative system. But it is not a pure negative registration system, the provisions in Article 19 paragraph (2) letter c UUPA in conjunction with Article 17 paragraph (1) PP Number 24 of 1997, the land registration officer (Land Office) in carrying out land registration takes measurements, the officer will look for information regarding the subjects and objects registered. Land registration officers are active, they don't just trust information from certificate applicants. So it is said to be a negative land registration system that has positive elements.

In practice, land certificate cases still often involve disputes because many people have ways of grabbing other people's land so that the case goes to court. So, to provide certainty and legal protection in the land sector, the holder of rights to a plot of land and other registered rights is given a certificate of land rights so that if a dispute arises in the future, he can prove himself to be the owner of the land. The use of the *Nemo plus iuris transferre potest quam ipse habet* principle and the *Nemo sibi ipse causam possessionis mutare potest* principle in the land registration process gives full and strong power to the land rights applied for. The full nature referred to is regarding the authority of the land owner to carry out actions on the land he owns in accordance with applicable legal provisions.

Meanwhile, the meaning of strongest is related to the owner's privileges in terms of defending his property rights from other parties who interfere. Regarding guarantees of protection and legal certainty for land ownership rights, there is further confirmation, namely through a mechanism called Land Registration or *Recht Kadaster*. So that it can be understood regarding the evidentiary strength of the land title certificate which is owned by the right holder and is actually given a full and strong guarantee from the provisions of the law because the certificate contains physical data and juridical data written and recorded at the local Land Office, so that the data what is recorded is deemed to be correct<sup>[13]</sup>.

Publication of registration of land rights in each country

varies depending on the legal system adopted by that country. There are 2 (two) types of publication of land rights registration which are generally carried out by countries in the world, namely the negative publication system and the positive publication system. The negative publication system is carried out using a registration system in the form of deeds, while the positive registration system is carried out using a registration system in the form of rights registration. The government's efforts to provide legal certainty for land rights holders are carried out by making improvements in services and the land rights registration system which prioritizes ease for rights owners to obtain juridical data and physical data without having to do a title search on the Land Office system. With a positive publication system, the Land Office identifies and records land parcels by determining the legal subject of the applicant by telling it in the land book. Before recording in the land book, PPAT first checks the applicant's submitted documents and makes special records at his office, so that the submitted documents can be tested for their correctness regarding the status of the land.

## 2. The Land Registration System Implemented in Indonesia to Provide Legal Certainty to Land Rights Certificate Holders

Land and land are vital elements in the life of the nation and state, because they are sources of justice and community prosperity. The Indonesian nation's relationship with the land is characterized by an eternal relationship<sup>[14]</sup>. Providing legal guarantees in the land sector first requires the availability of written, complete and clear legal instruments. Land and buildings are objects that play an important role in human life. Land and buildings are one of the basic human needs (shelter needs) which influence the existence of every individual because every human being needs a place to settle. Land rights have a role this is very important in human life, the more advanced society is, the more densely populated it is, the more important the position of land rights will be<sup>[15]</sup>. Providing guarantees of legal certainty to land rights holders is in order to create a sense of justice in society. The principles of fairness and equality are closely related to the principles of democracy in law. Providing guarantees of legal certainty to land rights holders is regulated in the UUPA articles relating to land registration. Articles 23, 32 and 38 of the UUPA are addressed to the rights holders concerned so that they receive certainty regarding their rights, while Article 19 of the UUPA is addressed to the government as an instruction that land registration be carried out throughout Indonesia using the *Kadaster Rechts* system, namely a recording system that aims to provide certainty law. Article 2 PP No. 24 of 1997 states that the principles of land registration are:

### 1. Simple Principles

This principle is intended so that the basic provisions and procedures can be easily understood by interested parties, especially land rights holders.

<sup>12</sup> Adrian Sutedi, *Ibid*, h.59

<sup>13</sup> I Made Citra Gada Kumara, I Ketut Kasta Arya Wijaya, Luh Putu Suryani, *Kepastian Hukum Pemegang Hak Atas Tanah Dalam Sistem Hukum Pertanahan Di Indonesia, Jurnal Preferensi Hukum*, Vol. 2, No. 3,(2021), h. 560-563

<sup>14</sup> Badan Pertanahan Nasional, *Laporan Kinerja Instansi Pemerintah Tahun Anggaran 2012*, (Jakarta: BPN RI, 2013), h. 1

<sup>15</sup> Achmad Rubaie, *Hukum Pengadaan Tanah Untuk Kepentingan Umum*, (Malang: Bayumedia, 2007), h. 1

## 2. Safe Principles

This principle is intended to show that land registration needs to be carried out carefully and carefully so that the results can provide legal certainty according to the purpose of land registration itself.

## 3. Affordable Principle

This principle means affordability for those who need it, especially taking into account the needs and capabilities of economically weak groups. The services provided in the context of carrying out land registration must be affordable for those who need them.

## 4. Latest Principles

This principle means adequate completeness in its implementation and continuity in data maintenance. Available data must represent the state of the art. For this reason, there is an obligation to register and record changes that occur at a later date. This principle requires that land registration data be maintained continuously and continuously, so that the data stored at the Land Office always corresponds to real conditions in the field.

## 5. Open Principle

This principle is intended so that the public can know or obtain information regarding correct physical data and juridical data at any time at the Regency/City Land Office.

According to Boedi Harsono, there are 2 (two) types of land registration systems, namely the deed registration system and the registration of titles system. In the rights registration system, every creation of new rights and legal acts that cause changes must also be proven by a deed. However, in carrying out the registration, it is not the deed that is registered, but the rights that are created and the changes made later. The deed is only the source of the data.

The rights registration system is visible in the Land Book as a document containing juridical data and physical data which is collected and presented as well as the issuance of certificates as proof of registered land rights <sup>[16]</sup>. Land registration activities are carried out in two ways, namely:

### 1. Pendaftaran tanah secara sistematis

Systematic land registration is a land registration activity for the first time carried out simultaneously which includes all registration objects that have not been registered in the area or part of the territory of a village/sub-district. Systematic land registration is carried out on the government's initiative based on a long-term and annual work plan and is carried out in areas determined by the Minister of State for Agrarian Affairs/Head of the National Land Agency.

### 2. Pendaftaran tanah secara sporadis

Sporadic land registration is a land registration activity for the first time regarding one or several land registration objects in the area of a village/sub-district individually or en masse. Sporadic land registration is carried out at the request or initiative of individual land owners or is also carried out by several land owners en masse at the expense of the land

owners themselves <sup>[17]</sup>.

With the enactment of Government Regulation Number 24 of 1997 concerning Land Registration which was later amended by Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Flats and Land Registration, it is certainly hoped that it will have a positive impact, both on the community and on the government Alone <sup>[18]</sup>.

There are several benefits that will be obtained by renewing the land registration system through Government Regulation Number 24 of 1997, namely:

#### 1. For the community

- a. With this new system, it will create a sense of security for land rights owners, because they will avoid the fear of being sued. This is something that is very important for society and is a very vital need for every land owner. With this feeling of security from land owners, they will work on their land seriously. This will have a positive impact on land productivity, where land production will be higher and the level of welfare of land owners or cultivators will also increase.
- b. Helps make it easier for people to obtain ownership rights to land, because the procedures for obtaining ownership rights to land are no longer rigid, especially in providing evidence. This convenience is possible because of the provisions regarding ease of proving ownership rights to land, as illustrated in article 7, article 24. Article 7 allows village heads to act as PPATs in remote areas. Article 24 allows a person who does not have any evidence at all regarding the land they control, to register their land based solely on land control in good faith for 20 years as long as during that time there are no parties suing, or if the person does not have complete evidence that can be trusted, the land owner can complete the evidence with testimony from witnesses whose testimony can be trusted by the Adjudication Committee.
- c. The community's economy is more advanced; This can happen, because in reality the certificate can be used as collateral for a loan at the bank. In this connection, for people who do not have capital to run a business, they can obtain business capital by using their certificate as bank collateral. In this way, it is possible for there to be more economic actors in society, which ultimately has a positive impact on the possibility of better economic growth.
- d. Facilitate the transfer of rights; With a certificate, the transfer of land rights will be easier, because it is enough to show the certificate to the National Land Agency accompanied by other necessary conditions. The National Land Agency can easily record and book the transfer of rights as quickly as possible
- e. Increase land prices; Land that has been registered with a certificate will usually have a higher resale value than that which is not certified. This is

<sup>16</sup> Urip Santoso. *Pendaftaran Dan Peralihan Hak Atas Tanah*. (Jakarta:Kencana Prenada Media Group, 2011), h. 31-32

<sup>17</sup> Adrian Sutedi, *Kekuatan Hukum Berlakunya Sertipikat Sebagai Tanda Bukti Hak Atas Tanah*, (Jakarta: Cipta Jaya, 2006), h. 29

<sup>18</sup> Desi Apriana, Arifin Bur, *Kepastian Hukum Dan Perlindungan Hukum Dalam Sistem Publikasi Pendaftaran Tanah Di Indonesia*, *Jurnal Bina Mulia Hukum* Vol. 5, No. 2, (2021)

understandable because the buyer already knows the truth about the data on the land he wants to buy and already has legal certainty regarding the status of the land.

- f. It is easier for people to obtain data about land because it is possible to use sophisticated tools. As explained earlier, in the new land registration system through Government Regulation Number 24 of 1997 it is possible to use sophisticated equipment (vide article 35 paragraph (5)).

## 2. Manfaat bagi pemerintah

- a. As it becomes easier for people to register their land, there will be more requests from the public to register land rights. In this way, the government's efforts to register all land in every region of the country will be realized more quickly. In this regard, the ideals of the Basic Agrarian Law which is to realize legal certainty and land rights can be realized.
- b. Reducing anxiety due to land disputes; Land, which has long been sought after by the community, often gives rise to conflict. Conflicts over land usually arise due to the lack of clarity regarding the true owner of the land. By making it easier to obtain proof of ownership of land, people are more encouraged to register their land.
- c. It makes it easier to determine policies in the land sector, because land administration is more orderly.
- d. Profitable for banking institutions; Banking institutions often provide credit to the public using land as collateral. Having a land certificate handed over as collateral by the borrowing community will increase confidence in the security of the money given to the community.
- e. Make it easier for the government to determine policies in other fields such as taxation, because it is easier to collect tax data.

Land registration when viewed from a legal aspect is to achieve the legal security required for land ownership. All property rights to land are registered items. A property right is <sup>[19]</sup>.

1. A right that follows from the object (*droit de suite*)
2. A right that has priority over younger material rights (in rem: regarding something) (*droit de priorite, prior tempore potior iure*); And
3. A right that has priority over individual rights (in personam: regarding a person) in general (*droit de preference*) <sup>[20]</sup>.

To obtain legal certainty over land plots, legal instruments are required that are written, complete, clear and implemented consistently in accordance with the spirit and content of the applicable provisions. This is achieved through land registration. As part of the land registration process, a

certificate as a means of proving the strongest land rights is issued. Land documents as a result of the land registration process are written documents containing physical and juridical data on the land concerned. These land documents can be used as collateral and become a reference for other parties who have an interest in the land.

Reforms in the field of agrarian law, especially land registration, are carried out with changes to land registration regulations, this is intended to further ensure legal certainty. Land registration includes <sup>[21]</sup>.

1. Measuring, mapping and recording land;
2. Registration of land rights and the transfer of these rights; and
3. Providing a valid proof of rights as a strong means of proof.

Legal certainty must be implemented to achieve justice and land policies can be implemented consistently. In order to provide legal certainty and protection, the holder of the land rights concerned is given a land rights certificate. Certificates are issued for the purpose of proving that the holder of the right in question is in accordance with the physical data and juridical data that have been registered in the land book. The physical data and juridical data stated in the certificate must be in accordance with the data contained in the relevant land book and measurement letter. Registration of land parcels is carried out in order to obtain legal certainty for land rights holders and other parties with an interest in land <sup>[22]</sup>.

The use of land must be adapted to the conditions and the nature of the rights, so that it is beneficial both for the welfare and happiness of those who own it and also for the community and state. This provision does not mean that individual interests will be completely overwhelmed by public interests. The UUPA also pays attention to individual interests which must balance each other, so that in the end the main goal will be achieved, namely prosperity, justice and happiness for the people as a whole. In order to achieve justice, prosperity, protection and legal certainty by registering land and issuing certificates, legal certainty regarding land rights will be achieved, because the juridical data and physical data contained in the land certificate are accepted as correct data <sup>[23]</sup>. A land title certificate is proof of land that has been registered and registered by an official body which is legally carried out by the state on the basis of law. So by issuing this certificate, it indicates that land registration has been carried out, and this registration will create profits due to the implementation of legal land administration <sup>[24]</sup>.

Legal certainty regarding land rights to provide certainty regarding the object of land rights, certainty regarding the subject of land rights and certainty regarding the status of land rights. The legal concept of a land title certificate is a proof issued by an authorized legal institution, which contains juridical data and physical data which is used as proof of ownership of land rights with the aim of providing legal certainty and certainty of rights to a plot of land owned

<sup>19</sup> Muchtar Wahid, *Memaknai Kepastian Hukum Hak Milik Atas Tanah: Suatu Analisis dengan Pendekatan Terpadu Secara Normatif dan Sosiologi*, (Jakarta: Republika, 2008), h. 43

<sup>20</sup> Arie Sukanti Hutagalung, dkk, *Hukum Pertanahan di Belanda dan Indonesia*, (Denpasar: Pustaka Larasan, 2012), h. 6.

<sup>21</sup> Setiawan, Ahmad. *Hukum Pertanahan (Pengaturan, Problematika Dan Reformasi Agraria)*. (LaksBang Justitia, Yogyakarta, 2019), h.45

<sup>22</sup> Sahnan. *Hukum Agraria Indonesia*. (Malang: Setara Press, 2016), h.45

<sup>23</sup> Muhammad Ilham Arisaputra, *Reforma Agraria Di Indonesia*. (Jakarta: Sinar Grafika, 2015), h.65

<sup>24</sup> Erna Sri Wibawanti, R. Mujiyanto. *Hak Atas Tanah Dan Peralihannya*. (Yogyakarta: Liberty, 2013), h.67

or possessed by a person or legal entity<sup>[25]</sup>. With the existence of a title certificate, it is hoped that juridically it can guarantee legal certainty and rights by the state for holders of rights to their land. This state guarantee is given to the owner or certificate holder because the land has been registered in the state land administration system.

The choice of land law policy regarding negative publicity stelsel (positive elements) refers to the land registration system. In the world there are two models or types of land registration which are called the first, the deed registration system model (registration of deeds) or also called land registration with negative publicity stelsel and second, the land registration system model (registration of title) or what is called a positive publicity system (torrens system).

Legal certainty for owners of land rights, according to the Basic Agrarian Law itself, can only be obtained through land registration procedures. In realizing land for justice and prosperity, land direction and policies are based on 4 (four) principles, namely:

1. Land must contribute significantly to improving people's welfare and creating new sources of prosperity;
2. Land must contribute significantly to improving a more just order of living together in relation to the use, control and ownership of land;
3. Land must make a real contribution in ensuring the sustainability of the Indonesian national and state social system by providing future generations with the widest possible access to economic resources; And
4. Land must contribute significantly to creating a harmonious order of life by resolving various land disputes and conflicts and organizing a management system that will no longer give rise to disputes and conflicts in the future<sup>[26]</sup>.

To obtain legal certainty over land plots, legal instruments are required that are written, complete, clear and implemented consistently in accordance with the spirit and content of the applicable provisions. This is achieved through land registration. As part of the land registration process, a certificate as the strongest proof of land rights is issued. Land documents as a result of the land registration process are written documents containing physical and juridical data on the land concerned. These land documents can be used as collateral.

The positive legal basis for the implementation of land registration can also be taken into account as mandated in Article 1 paragraph (3) of the 1945 Constitution (hereinafter referred to as the 1945 Constitution) which has concretely formulated strict legal norms, namely that Indonesia is a rule of law country. This legal norm is of course very closely related to the constitutional paradigm approach to the implementation of land registration itself. This can be further explained that the aspect of legal certainty has actually provided an atmosphere of peace and happiness for the community as holders of the rights to the land in question. If this happens, in fact the grand theory as put forward by Jeremy Bentham, that the implementation of a legislative

product should be able to guarantee a sense of happiness for society (utilitarianism) has been implemented<sup>[27]</sup>.

The existence of these provisions means that land title certificates can still be cancelled, therefore many people apply for cancellation of certificates because the provisions in these regulations allow this, so there are still many disputes that occur due to the use of a negative publication system with positive elements in Indonesia. This provision opens up opportunities for other people to sue people who already have a certificate.

### Conclusion

The legal certainty of land rights holders in the land law system in Indonesia is of the full nature referred to regarding the authority of the land owner to carry out actions on the land he owns in accordance with the applicable legal provisions. Meanwhile, the meaning of strongest is related to the owner's privileges in terms of defending his property rights from other parties who interfere. So that it can be understood regarding the evidentiary strength of the land title certificate which is owned by the right holder and is actually given a full and strong guarantee from the provisions of the law because the certificate contains physical data and juridical data written and recorded at the local Land Office, so that the data what is recorded is deemed to be correct.

The government's efforts to provide guarantees of legal certainty to land rights holders are by making improvements in services and land rights registration systems that prioritize ease for rights owners to obtain juridical data and physical data without having to do a title search on the Land Office system. Before recording in the land book, the PPAT first checks the applicant's submitted documents and makes special records at its office, so that the submitted documents can be tested for their correctness regarding the status of the land. Recording land ownership includes recording the serial number, location and boundaries of the land plot marked on the map as well as the name of the owner.

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<sup>26</sup> Sudantoko, Djoko dan Hamdani, Muliawan, *Dasar-Dasar Pengantar Ekonomi Pembangunan*, (Jakarta: PT PP Mardi Mulya, 2009), h. 85

<sup>27</sup> Idham, "Pendaftaran Tanah Dan Penerbitan Sertifikat Dalam Perspektif Free Trade Zone (FTZ) Di Kampung Tua, Kota Batam, Provinsi Kepulauan Riau", *Soumatara Law Review*, Vol. 2, No. 1, (2019), h. 100

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