

## THE ROLE OF CERTIFICATES AS EVIDENCE OF LAND RIGHTS TOWARDS THE ERA OF REVOLUTION 4.0

Author: Dr. Maiyestati, S.H., M.H.

Lecturer of Postgraduate Program of Law, University of Bung Hatta

Email: maiyestati1964@gmail.com

Article Info	Abstract
<p>Enter: 01/07/2021 Revision: 16/08/2021 Accepted: 28/08/2021 Rise: 30/08/2021</p> <p><b>Keywords:</b> Certificate, Evidence, Land Rights.</p>	<p><i>Considering the very importance of the use of land for people or business entities that demand legal certainty over the land, the formulation of the problem in this study is stated: how is the role of certificates as evidence of land rights in the era of revolution 4.0?. The type of research used to solve the problem in this study was juridical-normative, with qualitative analysis. The role of certificates as an evidence of land rights in the 4.0 revolution era in Indonesia is only a strong sign and is not an absolute evidence, with a negative system that contains positive elements. A certificate that has been legally issued in the name of a person or legal entity of another party who admit for the right may file a written objection to the certificate holder and to the Land Office.</i></p>
<p><b>Kata Kunci:</b> Sertifikat, Pembuktian, Hak Atas Tanah.</p> <p>P-ISSN: <b>1412-310X</b> E-ISSN: <b>2656-3797</b> DOI : <b>10.33061</b></p>	<p><b>Abstrak</b></p> <p><i>Begitu pentingnya kegunaan tanah bagi orang atau badan usaha menuntut adanya jaminan kepastian hukum atas tanah tersebut, Rumusan masala bagaimana peranan sertifikat sebagai pembuktian hak atas tanah di era revolusi 4.0 ?. Jenis penelitian yang digunakan untuk memecahkan permasalahan yuridis-normatif, dengan analisis secara kualitatif. Peranan sertifikat sebagai pembuktian hak atas tanah di era revolusi 4.0 di Indonesia hanya merupakan tanda bukti yang kuat dan bukan merupakan tanda bukti yang mutlak, dengan sistem negatif yang mengandung unsur positif. Sertifikat yang sudah diterbitkan secara sah atas nama orang atau badan hukum pihak lain yang merasa mempunyai hak tersebut dapat mengajukan keberatan secara tertulis kepada pemegang sertifikat dan kepada Kantor Pertanahan.</i></p>

### I. INTRODUCTION

The need for land today is increasing in line with the increase in population, the number of business entities, and the increase in other needs related to land. Considering the importance of the use of land for people or business entities, this requires a guarantee of legal certainty over the land.<sup>1)</sup>

<sup>1)</sup> Florianus SP Sangsun, Procedure for Managing Land Certificates, Transmedia Pustaka, Jakarta, page 1

To obtain legal certainty over land parcels, 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, certificates as the strongest means of proving land rights are issued. Land certificates are valid legal evidence of land ownership. However, the process of obtaining land certificates in Indonesia is quite complicated. BPN even admits that it is only able to target that all land in Indonesia will only be certified in 2028. This means that BPN will need another 9 years to certify all land in this country.<sup>2)</sup>

Meanwhile, until now, only 49% of land owned by the Indonesian people have been certified, this situation is certainly very worrying for an agricultural country. The mechanism for administering a certificate that “looks convoluted” has given rise to complicated conditions. Every day, many people want to take care of certificates at BPN, but BPN services always drag on and take a long time. Whereas, Article 19 of the UUPA (Law on Basic Agrarian Affairs) confirms that certificates are held through land registration throughout Indonesia to ensure the legal certainty which includes:

- a. Measurement, mapping and bookkeeping of land.
- b. Registration and transfer of such rights.
- c. Provision of valid proof of rights documents as strong evidence.

The implementation of land registration has not been optimal since there are several problems:

1. There are often cases of double certificates caused by the unmapped land parcels registered in the registration map.
2. Until now, there is no unified interpretation regarding the definition of customary land and state land. This difference in the interpretation results in the problems in the field.
3. Expansion of Province, Regency and City, District, and Village or amalgamation of Villages. This situation is not favorable in the implementation of land registration.<sup>3)</sup>

Currently, the DPR is preparing the Land Bill. Deputy Chairman of Commission II DPR Lukman Edy said,<sup>4)</sup> In the Land Law, there are nine issues that will be regulated: one of them is the issue of overlapping land ownership. These problems are found in a number of areas in Indonesia.

In the practice, it is very clear that many people have difficulty registering their land. The process is long and expensive. Land office services seen from the administrative aspect have also not been able to provide the expected performance, namely simple, safe, affordable and transparent services. In fact, it can be seen in the field that services are still slow, difficult, expensive and convoluted and allow for malpractice to occur. Some of the land administration services desired by the community

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<sup>2)</sup> National Land Agency, Association of Land Registration Papers, No year, no publisher, page 44

<sup>3)</sup> Adrian Sutedi, 2006, Transfer of Land Rights and Land Registration, Sinar Grafika, Jakarta, page 168-169.

<sup>4)</sup> DPR Prepares Land Law, Discusses Nine Main Problems, Jawa Pos, 25/03/15.05.45 PM, page 1-4.

are not in accordance with those provided by the land office employees<sup>5</sup>). As a result, the legality of assets is 4.5 million hectares, including 3.9 million hectares of legalized assets and 06 million hectares of uncertified transmigration land, and land redistribution of 4.5 million hectares.<sup>6</sup>) Meanwhile, the Head of the Regional Office for the National Land Agency of West Sumatra Province, Sudaryanto stated in the report that the 2019 West Sumatra Agrarian Reform Object Land (TARO) increased to 58,254 hectares or an increase of 7.23% compared to the 2018 West Sumatra TARO which was only 54,315 hectares.<sup>7</sup>

## RESEARCH METHODS

The type of research used to solve problems in this research was juridical-normative, by examining and tracing theories, concepts and laws and regulations related to the subject matter to be discussed with qualitative analysis in the form of a series of words not series of numbers.<sup>8</sup>

## DISCUSSION

### A. Legal Basis of Land Registration

The land registration process is carried out based on Law no. 5 of 1960 concerning the Basic Regulations on Agrarian Principles, which was promulgated on September 24, 1960 (known as the LoGA), is an implementation of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. in Western law, for example *Eigendom* Rights, *Erpacht* Rights, *Opstal* Rights whose purpose is to provide legal certainty guarantees and the holder is given evidence with a deed made by the Transfer Officer. As for land that is subject to customary law, for example *yasan land*, *gogolan land*, the land registration is not carried out, even if the land registration is carried out, the purpose is not to provide legal certainty guarantees, but the aim is to determine who is obliged to pay taxes on land and to the payer. Taxes are given evidence in the form of finches, *girik*, or *petuk*. This land registration is known as *Fiscal Cadastre*.

Article 19 of the UUPA orders the holding of land registration in order to guarantee legal certainty. The registration of the land is further regulated by the Government Regulation no. 10 of 1961 concerning Land Registration and later replaced by the Government Regulation no. 24 of 1997 concerning Land Registration, and the Regulation of the Minister of Agrarian

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<sup>5</sup>) *Ibid*, PAGE 164-165.

<sup>6</sup>) West Sumatra Provincial Government Public Relations.

<sup>7</sup>) *Ibid*

<sup>8</sup>) Matthew B. Miles A, Michael Huberman, 1992, *Qualitative Data Analysis*, UI PRESS, Jakarta, page 15-

Affairs/Head of BPN No. 3 of 1997 concerning Implementing Provisions for Government Regulation no. 24 Year 1997. These two government regulations are a form of implementing land registration in the context of Recht Cadastre which aims to provide legal certainty and legal protection to holders of land rights, with evidence produced at the end of the registration process in the form of a Land Book and Land Certificate consisting of a copy of the Land Book and Letter of Measurement. The land title certificate is a strong evidence as stated in Article 19 paragraph (2) letter c, Article 23 paragraph (2), Article 32 paragraph (2), and Article 38 paragraph (2) of the UUPA.

## B. General Land Registration System

The land registration system used in a country depends on the legal principles adopted by the country in transferring its land rights. There are 2 kinds of legal principles in the land registration, namely. The principle of good faith and the principle of *nemo plus juris*.<sup>9)</sup> The principle of **good faith** stated that: a person who obtains a right in good faith will remain the legal right holder according to law. This principle aims to protect people with good intentions. But here the difficulty arises: how to know people with good intentions. The answer is that only people with good intentions are willing to obtain rights from people whose rights are registered. In order to protect people with good intentions, it is necessary to have a certificate that has the strength of evidence. The registration system is called the positive system. It is different with the principle of **nemo plus juris** which stated that: people cannot transfer rights beyond the rights that are in them. This means that the transfer of rights by unauthorized persons is null and void. This principle aims to protect the actual rights holders. Based on this principle, the actual right holder will always be able to reclaim his rights registered in the name of anyone. Therefore, the certificate does not have the strength of evidence. The land registration system is called the negative system.

Table 1

### ADVANTAGES AND DISADVANTAGES OF POSITIVE SYSTEM

No.	POSITIVE SYSTEM ADVANTAGES	POSITIVE SYSTEM DISADVANTAGES
1.	Certificates generally have the strength of evidence, thus, the registered person is the legal right holder according to the law. In this positive system, there is certainty from the right	The registration is not carried out smoothly and it may happen that the registration on behalf of an unauthorized person can annul the rights of another person who is entitled to the land.

<sup>9)</sup> Adrian Sutedi, *op cit*, page 117.

	holder, therefore there is encouragement for everyone who registers their rights.	
2	What has been registered is guaranteed the truth of the registered data and for this purpose the government examines the truth and validity of each document submitted for registration before it is included in the registers.	The active role of transfer officials takes a long time.
3	The function of the land registration is to provide a guarantee that the name of the person registered in the public register cannot be disputed, even if that person is not the actual owner of the land concerned.	The rightful owner can lose the rights beyond the actions and beyond the fault.
4	Each registration of rights and transfer of rights in the positive system requires a very careful and thorough examination before the person is registered as the owner in the general register.	What becomes the authority of the court is placed under administrative power, which means that in solving problems, everything that should be the authority of the court becomes the administrative authority.
5	Registrars play a very active role besides having sufficient equipment.	
6	The state guarantees the truth of the data presented. With the registrar, rights are created, which cannot be contested, and to ensure the existence of a right and the holder of the right, it is enough to look at the land book.	
7	Once registered by the party who can prove that this person is the actual right holder, and vice versa, the other party loses the right to reclaim the land concerned.	
8	If the registration occurs due to the error of the registration official, the other party can only demand compensation in the form of money. For this reason, the state provides what is called an "Assurance Fund".	

9	Adopted by Germany, Switzerland, Austria, Philippines, and Australia. For example, in the implementation of the Positive stelsel in Germany, there is a special official who is responsible for checking every registration on the existing lists. The official was called the <i>Grunnbuchrichter</i> . Also in the Netherlands carried out by the state commissions <sup>10</sup> .
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According to the positive system, a land certificate given is valid as an evidence of absolute land rights, and is the only evidence of land rights. The characteristics of a positive land registration system are as follows:

1. Land registration/registration of land rights guarantees perfectly that the name registered in the land book cannot be disputed and cannot be contested, even though the person is not the owner who has the right to the land. Giving absolute trust to the land book.
2. Land registration officers/officials behind the title of land in this system play a very active role. The officer/official investigates whether the transferred land rights can be registered or not. They investigate the identity of the parties, their powers, and whether the required formalities have been complied with or not.
3. The legal relationship between the rights of the person whose name is registered in the land book and the giver of the previous right is severed since the right is registered.<sup>11</sup>

Table 2

ADVANTAGES AND DISADVANTAGES OF NEGATIVE SYSTEM

No	NEGATIVE SYSTEM ADVANTAGES	NEGATIVE SYSTEM DISADVANTAGES
1	Pendaftaran yang dilakukan lancar/cepat dan pemegang hak yang sebenarnya tidak dirugikan sekalipun orang yang terdaftar dalam sertifikat bukan orang yang berhak.	In general, certificates do not have legal force, so that the registration of a person in the General Register is not proof that that person is entitled to the rights that have been registered. Thus, the registered person will bear the consequences if the rights he gets come from people who are not

<sup>10)</sup> A.P. Parlindungan, 1994, Land Registration in Indonesia, Mandar Maju, Bandung, page 25

<sup>11)</sup> Bachtiar Effendi, 1993, Collection of Writings About Land, Alumni, Bandung, page 32.

		entitled, so that other people are reluctant to register their rights. In general, certificates do not have legal force so that the registration of a person in the General Register is not evidence that that person is entitled to the rights that have been registered. Thus, the registered person will bear the consequences if the rights he gets come from people who are not entitled, so that other people are reluctant to register their rights.
	Protection is given to the actual right holder, so with this principle, there is always the possibility of a lawsuit against the registered owner from people who feel they are the real owners.	In this case, the owner registered in the certificate is not protected as a legal holder by law. Thus, registration means registration of rights that are not absolute, so this means registering a legal event, namely the transfer of rights, by registering a certificate or deed which in English is called a registration of deeds.
	Regardless of the possibility of losing or winning the defendant, namely the holder of registered rights, then this means that the general register held in a country with the principle of the registered owner is not protected by law, has no evidence strength. <sup>12)</sup> This means that a person is registered in the general register as a right holder before proving that person is a legal right holder. Thus, the government does not guarantee the truth of the contents of the general lists, which are held in the registration of rights and are not stated in the law.	

<sup>12)</sup> National Land Agency, *loc cit.*

## V. RESEARCH RESULTS AND DISCUSSION

Land registration is held in order to provide legal certainty in the land sector, as stated in Article 19 paragraph (2) letter c, Article 23 paragraph (2), Article 32 paragraph (2) and Article 38 paragraph (2) of the UUPA. Legal certainty regarding land rights as aspired by the UUPA includes three things, namely certainty regarding the object of land rights; certainty regarding the subject of land rights, and certainty regarding the status of land rights.

Article 19 of the UUPA states that in order to "guarantee legal certainty", the letters of proof of rights are issued, which serve as a strong means of proof regarding the physical data and juridical data contained therein, as long as the physical data and juridical data are in accordance with the data contained in the letter of measurement and also the book of land rights concerned, which means that "as long as it cannot be proven otherwise, the physical data and juridical data contained therein must be accepted as true data.

The land certificate includes physical data and juridical data that must be accepted as correct data, both in making daily laws and in disputes in court. Therefore, the data contained in the certificate must be in accordance with what is stated in the letter of measurement and the land book. In addition, a person or legal entity cannot claim a certified one on behalf of another person or legal entity if within 5 (five) years from the issuance of the certificate. Therefore, the person or legal entity does not file a written objection to the certificate holder and the relevant Land Office or does not file a lawsuit with the court regarding the control of the land or the issuance of the certificate.<sup>13)</sup> While the land is obtained by another person or legal entity in good faith and physically controlled by him/ her or by another person or legal entity that has his/ her approval.<sup>14)</sup>

The provision of 5 years for the party who feels he/ she has the right to the land concerned in the current state of the means and the intensity of communication is reasonable enough, to enable him/ her to know that his/ her land without consent is controlled by another party and to stop the control of the land concerned by another party.

This means that the information contained in the certificate has legal force and must be accepted as true information throughout and as long as there is no evidence to prove otherwise.<sup>15)</sup> In this system, the State only passively accepts what is stated by the party requesting registration. Therefore, at any time it can be sued by people who feel more

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<sup>13)</sup> Adrian Sutedi, op cit, page 158.

<sup>14)</sup> See Article 32 paragraphs (1) and (2) of Government Regulation No. 24 of 1997 concerning Land Registration,

<sup>15)</sup> Arie S. Hutagalung, Application of the Rechtsverweking Institute to Overcome Weaknesses of the Negative Publication System in Land Registration, Law and Development No. 4 (October-December 200), p. 328.

entitled to the land. The party who acquires land from a registered person is not guaranteed, even if he/ she acquires the land in good faith. Thus, in Indonesia the system adopted, namely negative publications that contain positive elements, the state does not guarantee the truth of the data presented. Its use is at the risk of the party using it himself/ herself.<sup>16)</sup> This statement is supported by Budi Harsono,<sup>17)</sup> who states from the contents of the article above, it can be seen that in Indonesia, it does not use a pure negative publicity system but what is called a negative system which contains positive elements. A purely negative publication system will not use a rights registration system. There will also be no statement as in the articles of the UUPA, that certificates are strong evidence. And the system used is the rights registration system, not the deed registration system. This can be seen by the existence of a land book as a document containing juridical data and physical data that are collected and presented and the issuance of certificates as proof of the registered rights.

## CONCLUSION

The role of certificates as proof or evidence of land rights in the 4.0 revolution era in Indonesia is only a strong sign and is not an absolute proof, with a negative system that contains positive elements. A certificate that has been legally issued in the name of a person or legal entity of another party who feels he/ she has the right may file a written objection to the certificate holder and to the Land Office.

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<sup>16)</sup> Boedi Harsono, op cit, page 85-86.

<sup>17)</sup> Boedi Harsono, 2002, *Towards the Completion of National Land Law*, Trisakti University, Jakarta, p 98

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