

Legal Certainty for Unregistered Land Rights Holders in Lebo Jaya Village, Southeast Sulawesi, Indonesia



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ABSTRACT: The aim of this research is to analyze the legal certainty for land rights holders who are not identified in systematic land registration activities and to determine the legal consequences for those land rights holders. This research uses a qualitative descriptive method with an empirical normative approach, relying on secondary data through a descriptive study and analysis of statutory regulations and relevant literature. The research findings are as follows: (1) Legal certainty for land rights holders who are not identified in systematic land registration: The UUPA mandates that guaranteeing legal certainty for land rights is essential. Land rights holders not identified in PTSL activities lack legal certainty, as accurate and valid physical and juridical data are foundational for establishing legal certainty. A party who abandons their land without transferring authority to another party may be deemed to have abandoned it, thus categorizing the land as State land. Similarly, a party who takes control of the land cannot be considered the rightful holder unless they can prove their physical control over the land in good faith. (2) Legal consequences for land rights holders who are not identified in systematic land registration: A party claiming entitlement may lose their land rights and can seek to regain them through litigation or non-litigation, in accordance with statutory regulations. Rights holders who have received state legalization in the form of a certificate (Cluster 1), such as through PTSL, will have their rights protected and can use their land rights according to the designation or carry out legal actions on the land. This protection is not available to parties who feel they have rights but are not identified in PTSL activities. Dispute resolution through litigation typically occurs when the parties involved cannot reach an amicable agreement through non-litigation or out-of-court settlement methods. Parties to the dispute can also file complaints with the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, Regional Office, or Land Office, as per their authority, to obtain resolution in accordance with statutory provisions.

KEYWORDS: Land rights holders, Unregistered land

I. INTRODUCTION

Land plays a vital role in the life of the nation. It is not just a place to live but also a resource that can bring prosperity if managed well. According to Article 33 paragraph (3) of the 1945 Constitution, the state has the authority to regulate land in Indonesia, including its control, ownership, and use. This ensures a clear legal relationship between people and land. The main rules about land are found in Law Number 5 of 1960 on Basic Agrarian Principles (UUPA), which outlines land rights for individuals and organizations. To protect these rights, land registration is required, as stated in Article 19 of the UUPA. This is further detailed in Government Regulation Number 24 of 1997 on Land Registration.

Land registration is the government's obligation to carry out all land in Indonesia. The government's responsibility in land registration activities is to create legal certainty and legal protection for land rights holders (Yazied Fahma, et. All, 2022). The Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency (ATR/BPN) targets that all 126 million plots of land in Indonesia will have certificates by 2025 (Ni Putu Putri Muliantari, 2023). Since 2016, land data in Indonesia that has been registered until 2023 through the PTSL program is 101.1 million plots of land (Aisyah Sekar Ayu Maharani, 2023). The government's goal of registering all land parcels is still unmet. This is challenging because success depends on public awareness to register their land and having complete proof of ownership. Government Regulation Number 24 of 1997 outlines two methods of land registration: systematic and sporadic. Systematic registration is organized by the government for an entire area, actively collecting and registering land data. Sporadic registration depends on individuals applying for registration, with the government waiting for requests.

The government continues to strive to increase the amount of land that has been registered through various programs such as the Land Management and Policy Development Project (LMPDP) or adjudication project, the Land Administration Project (PAP), the National Agrarian Program (PRONA), and Larasita (Yazied Fahma, et. All, 2022). Currently, through ATR/BPN Ministerial Regulation Number 12 of 2017 concerning the Acceleration of Complete Systematic Land Registration (PTSL), it is

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being used as an effort to achieve the registration target for all land by 2025. PTSL helps communities certify their land, but they still need to provide supporting evidence for registration. Many people don't register their land because they feel secure with their current physical control. However, in disputes, it becomes hard to prove ownership without official registration. Some landowners neglect their land for long periods, allowing others to take control and register it, leading to land disputes in the area.

Lebo Jaya Village in South Konawe, Southeast Sulawesi, is an agricultural area where most residents grow vegetables. Land ownership is often inherited, but many have not registered their land. According to the South Konawe Land Office, only 60% of land has been certified. Some uncertified land has been abandoned and taken over by others, leading to disputes when the original owners object, claiming they never gave up their rights. In land registration, disputes over ownership can delay the process. Land certificates cannot be issued until the dispute is resolved and no objections remain. The effectiveness of land registration is very necessary because land registration which produces certificates apart from providing legal protection for land rights holders is also very necessary for local governments. For regions, one of the urgencies of having complete land data through land registration activities is that it can help local governments to take policies in the field of spatial planning and land Humas Kementerian Agraria dan Tata Ruang / Badan Pertanahan Nasional, 2024)

Therefore, research is needed to analyze the legal certainty for land rights holders not identified in systematic land registration. This will help ensure certainty for those who genuinely control land in good faith. This study uses a normative research approach, focusing on legal science and examining the relevant laws regarding the legal certainty of these land rights holders.

II. RESEARCH PROBLEM

- a. What is legal certainty for land rights holders who are not identified in systematic land registration activities?
- b. What are the legal consequences for land rights holders who are not identified in systematic land registration activities?

III. LITERATURE REVIEW

A. Legal Certainty for Unregistered Land Rights Holders

Legal certainty is one of the principles that is always associated with legal protection. According to Sudikno Mertokusumo, the existence of this principle is interpreted as a situation where the law is certain because of the concrete strength of the law in question. The existence of the principle of legal certainty is a form of protection for justice seekers against arbitrary actions, which means that a person will and can obtain something they hope for in certain circumstances (Soedikno Mertokusumo, 1993). Furthermore, according to Soedikno, legal certainty is a guarantee that the law must be implemented in a good manner. This means that legal certainty expects efforts to regulate law in laws and regulations that are made with authority. So these rules have a juridical aspect that can guarantee certainty that the law functions as a rule that must be obeyed (Zainal Asikin, 2012). Normatively, legal certainty is defined as a form of legal regulation that is created and promulgated with certainty, which means that legal certainty can regulate clearly and logically so that it does not give rise to doubt if there are multiple interpretations of the rules and does not cause conflict in existing norms in society (Mochtar Kusumaatmadja, Arif B. Sidharta, 2000).

B. Land Rights Holder

According to K. Wantjik Saleh, land rights mean granting authority to use land within the limits regulated in legislation (K. Wantjik Saleh, 1977). This opinion is in line with Soedikno Mertokusumo who stated that land rights are rights that give authority to those who have the right to use or take advantage of the land they own (Soedikno Mertokusumo, 1988). The holder of land rights or the owner of the right is authorized to use or take advantage of the land he or she owns (Efendi Perangin, 1994).

UUPA regulates that land rights are rights to land as stipulated in Article 16 UUPA, especially rights to primary land (Ali Achmad Chomzah, 2002). Article 16 lists the types of land rights, including ownership, business use, building use, use, rental, land clearing, forest product rights, and other rights defined by law. Article 53 of the UUPA also mentions temporary land rights, such as pawn rights, profit-sharing business rights, hitchhiking rights, and agricultural land rental rights. Article 1, number 3 of PP Number 20 of 2021 defines land rights as rights obtained through the legal relationship between the landowner and the land, including the space above and below the land. These rights allow the owner to control, own, use, exploit, and maintain the land and its spaces.

C. Systematic Land Registration

According to PP Number 24 of 1997 on Land Registration, land registration is an ongoing process carried out by the government. It involves collecting, processing, recording, and maintaining physical and legal data, including maps and lists of land plots and apartment units. This also includes issuing certificates to confirm ownership rights of land and apartment units, as well as any rights that may affect them. Land registration in Indonesia consists of 2 (two) stages, namely registering land for the first time and then maintaining land registration data. For the first time, land registration was carried out through 2 (two) types of registration, namely systematic land registration and sporadic land registration. Systematic land registration is carried out simultaneously with the Government's initiative, in this case the National Land Agency to register land plots that have not been

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certified based on a long-term and annual work plan and is carried out in areas determined by the State Minister for Agrarian Affairs/Head of BPN while land registration sporadic is carried out on the initiative of the owner of a plot of land that has not been registered (Harris Yonatan Parmahan Sibuea, 2011).

IV. RESULTS AND DISCUSSION

A. Legal Certainty of Land Rights Holder

Law and certainty are closely linked. The law exists to create certainty, and certainty makes people more likely to follow the law. To ensure certainty, laws must be established before actions are taken, so people know what is allowed, what is not, and the consequences of breaking the law. Certainty means "provision; provisions" whereas if the word "certainty" is combined with the word "law" then it becomes legal certainty, which is defined as a legal instrument of a country that is able to guarantee the rights and obligations of every citizen of the country (Nyoman Gede Remaja, 2014). Guaranteeing legal certainty of land rights is a key requirement of the UUPA. This ensures that landowners feel secure in their ownership, so they can engage in economic activities on the land without worrying about potential losses to their investment. Legal certainty of land rights must be guaranteed by the state through land registration (I Gusti Nyoman Guntur et.al, 2017). According to Bernard L. Tanya, Yoan N. Simanjuntak and Markus Y. Hage, by using Gustav Radbruch's concept of legal certainty, registered land parcels will be protected from arbitrariness (Harris Yonatan Parmahan Sibuea, 2011).

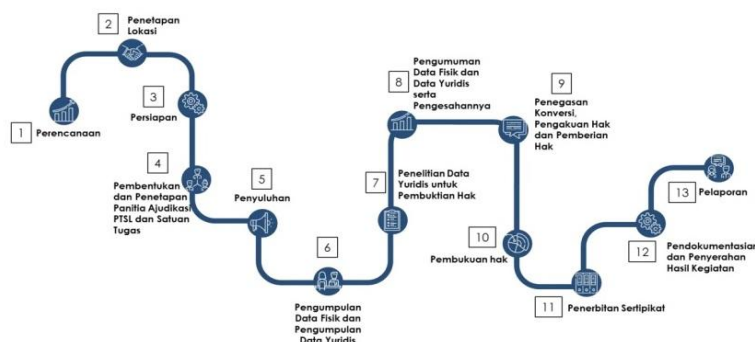
Systematic land registration is a method the government uses to increase the number of registered lands and meet the 2025 target. However, research by the Systematic Team in 2017 found several issues after the measurement and mapping process based on Government Regulation Number 24 of 1997 and Ministerial Regulation Number 3 of 1997. These issues included: (1) Fields registered but not mapped, (2) Registered and mapped areas with problems, (3) Incomplete field information, and (4) Incomplete spatial data for land in one sub-district. There were also cases where PRONA was carried out on already certified land. Additionally, past systematic land registration efforts faced challenges with data quality. For example, in recording physical data on land objects, when determining boundary markings using the principle of *contradictur de limitatie*, it cannot be implemented by presenting the land owners of the bordering plots according to the rules because the nature of the work requires speed of completion. The principle of *contradictur de limitatie* in systematic registration activities mostly uses the Head of the Hamlet, or the Head of the RT to confirm the field boundaries so that errors in the position of the land boundary marks often occur (I Gusti Nyoman Guntur et.al, 2017).

The government is trying to make a breakthrough to speed up the implementation of land registration by also improving the weaknesses of land registration in programs that have been implemented previously through Complete Systematic Land Registration (PTSL). PTSL is implemented based on the Regulation of the Minister of Agrarian Affairs and Spatial Planning of the Head of the National Land Agency of the Republic of Indonesia Number 6 of 2018 concerning Complete Systematic Land Registration. This is also supported by Presidential Instruction Number 2 of 2018 concerning the acceleration of complete systematic land registration in all regions of the Republic of Indonesia. This policy is a National Strategic Program with the concept of building data on new land parcels and at the same time improving and maintaining the quality of data on existing registered land parcels so that all registered land parcels are complete and accurate, providing a guarantee of certainty and legal protection of land rights and a guarantee of location certainty, and land parcel boundaries (Kementerian Agraria dan Tata Ruang/Kepala Badan Pertanahan Nasional, 2023).

One of the areas using PTSL is South Konawe Regency, specifically Lebo Jaya Village in Konda District. The PTSL process requires complete data from the land rights holder. If written evidence is unavailable, Article 24 of the Minister of Agrarian and Spatial Planning Regulations/Head of BPN Number 3 of 1997 allows the rights holder to prove their ownership through 20 years of continuous physical control of the land. In Lebo Jaya Village, some people control land by physically managing it, but later abandon it, thinking it's still theirs. When others take over and use the land, the original owner may return and feel their rights have been taken.

To resolve this, legal certainty is needed to determine the true landowner. All land data collected in the PTSL process must be clear to protect the rights holders. The required data includes physical data, such as land location, boundaries, and area, and juridical data, which includes information about the legal status, rights holder, and any other claims or burdens on the land. PTSL objects include all land parcels without exception, both land parcels that do not yet have land rights and private land parcels that have rights in order to improve the quality of land registration data. To collect data and assess its accuracy on PTSL objects, during the PTSL implementation stage an Adjudication Committee was formed, which is an organizational unit formed by the Head of the Land Office to carry out complete systematic land registration. The adjudication committee is also assisted by a physical task force, a juridical task force and an administrative task force, namely organizational units that assist in implementing the activities of the PTSL Adjudication Committee.

The PTSL implementation flow is: (Kementerian Agraria dan Tata Ruang/Kepala Badan Pertanahan Nasional, 2023).



Physical data collection involves measuring and mapping land plots using survey and mapping technologies such as terrestrial, photogrammetric, satellite methods, or a combination of these. During this process, the Physical Task Force must gather information about each landowner or entitled party, including at least a copy of their ID card, family card, or a residential certificate from the relevant authority. Juridical data collection focuses on evidence of land ownership or control, including written documents, witness statements, and other relevant testimonies. This involves researching the land's ownership history, which is recorded in the Judicial Data Research Minutes.

For the purposes of proving rights, the PTSL adjudication committee conducts research on juridical data. If proof of community land ownership is incomplete or does not exist at all, it can be completed and proven by a written statement regarding ownership and/or physical control of the land plot in good faith by the person concerned. The element of good faith is one of the elements that can be used to assess or prove a person's control over a plot of land. The element of good faith consists of the fact of physically controlling, using, exploiting and maintaining land from generation to generation within a certain time and/or obtaining it in a way that does not violate statutory provisions.

Good faith in PTSL is proven by the applicant's statement confirming:

- a. No objections or disputes exist over the land; and
- b. The land is not: owned by the Government, Regional Government, or State/Regional-Owned Enterprises; or part of a Forest Area.

Good faith in PTSL is shown through the applicant's statement that:

- a. There are no disputes or objections from others about the land; and
- b. The land is not: government or state-owned property, or part of a forest area.

The statement letter was made with provisions:

- a. Testimony from at least two local witnesses with no family ties to the applicant (up to the second degree), confirming the applicant's ownership and control of the land; and
- b. A statement based on true, accountable information. If the statement is later proven false, the PTSL Adjudication Committee holds no responsibility.

In PTSL activities, juridical data information is obtained from rights subjects who really know the conditions related to the juridical data in question, namely the community/citizens. Therefore, it is very important for the accuracy of physical data and juridical data for parties who feel they are rights holders in land registration activities. Legal certainty for land rights holders in PTSL activities is lacking when physical and juridical data are not accurate and valid. Landowners who abandon their land without authorizing another party may have their land categorized as State land. Similarly, new occupants cannot be considered rightful owners without proving good-faith physical control of the land.

B. Legal Consequences for Unregistered Land Rights Holders in Systematic Land Registration

One goal of land registration is to ensure legal certainty over land rights, including clarity about rights holders, the type of land rights, and accurate data collection to guide the government. PTSL activities result in four clusters:

1. Cluster 1: Land plots with complete physical and juridical data that qualify for a Land Rights Certificate.
2. Cluster 2: Land plots with complete data for certification but are involved in court cases or disputes.
3. Cluster 3: Land plots with incomplete or non-compliant data, preventing certification under Ministerial Regulation Number 6 of 2018.
4. Cluster 4: Land plots already certified but either unmapped or mapped inaccurately, requiring updates for inclusion in the Complete Systematic Land Registration Map within a single administrative area.

Rights holders who receive a certificate from the State (Cluster 1), such as through PTSL, gain legal protection and the ability to use their land according to their rights. However, those not identified in PTSL activities do not have this protection. As a result, they may lose their land rights but can take legal action, either through litigation or non-litigation, to reclaim their rights according to the law. Indonesia's land law follows the principle of negative publication, established in the Supreme Court Decision

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Number 459/K/Sip/1975. This means that registering someone's name in the land register does not automatically make them the absolute owner if another party can prove the land ownership is invalid (Bachtiar Efendi, 1993).

Minister of Agrarian and Spatial Planning Regulation/Head of BPN Number 6 of 2018 states that one of the duties of the adjudication committee is to help resolve disputes over land data. Land disputes are conflicts between individuals, legal entities, or institutions that don't have wide socio-political impacts. In contrast, land conflicts involve disputes with broader social and political consequences. Land disputes can include issues related to ownership, transactions, registration, utilization, control, and customary rights. Land cases refer to disputes resolved by judicial institutions, including those still pending at BPN RI (Rahmat Ramadhani, 2023).

Legal efforts to resolve land disputes often follow litigation when the parties involved cannot reach an amicable agreement through non-litigation processes. These non-litigation methods—such as mediation, negotiation, conciliation, or arbitration—are regulated under Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, and are generally preferred for their speed and cost-effectiveness. Alternatively, disputes can also be addressed by submitting a complaint to the Ministry of Agrarian Affairs and Spatial Planning, the National Land Agency, or the relevant Regional Land Office, depending on their jurisdiction. This process is outlined in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of BPN Number 21 of 2020, which provides guidelines for handling and resolving land cases.

For those who believe they hold rights to land but are not identified in the PTSL process, it is critical to report this to the Land Office where the land is located. This step ensures that their rights are recognized and protected. Physically controlling the land alone does not suffice as proof of ownership; obtaining a land certificate through the registration process is essential for establishing legal ownership and securing land rights.

V. CONCLUSION

1. Legal Certainty of Land Rights Holders Not Identified in Systematic Land Registration: Guaranteeing legal certainty for land rights holders is a key aspect of the UUPA. Those not identified in PTSL activities lack legal certainty because accurate physical and juridical data are essential to establishing ownership. If a party abandons their land without transferring control, the land may be considered abandoned and categorized as State land. Similarly, a party who takes control of land cannot claim ownership without proving physical control in good faith.
2. Legal Consequences for Land Rights Holders Not Identified in Systematic Land Registration: Parties who believe they hold land rights but are not identified in PTSL may lose their rights and can seek to regain them through legal action, either through litigation or non-litigation methods. In contrast, those who have received a certificate through PTSL (Cluster 1) will have their rights protected and can use or manage their land legally. If disputes arise, parties can pursue resolution through litigation if an agreement cannot be reached out of court. Alternatively, they can file a complaint with the Ministry of Agrarian Affairs and the relevant Land Office for resolution according to legal procedures.

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