

## The Existence of A Court Decision With Legal Force Remains in the Process of Registering Land Ownership for the First Time



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**ABSTRACT:** This research aims to analyze the position of court decisions that have permanent legal force in the certificate issuance process and the mechanism for issuing land ownership certificates based on court decisions that have permanent legal force. This research is normative research which places law as a building system of norms. The approaches used by the author are the Legislative Approach and the Legal Concept Analysis Approach. The research results show that the court decision can be a strong basis for changing or updating land ownership status in land registration records. In issuing a certificate of ownership of land, the application is submitted and the Badung Regency Land Office officer carries out a field inspection. A certificate is issued if the documents are complete which can also be seen from the absence of any notes in the land book.

**KEYWORDS:** Court decision, legal force, land registration

### INTRODUCTION

Indonesia is a country of law, this is stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia).[1] The existence of the State of Law places the law as the commander or supremacy, both law in the sense of laws and regulations and court decisions. Laws and regulations are written regulations that contain generally binding legal norms and are formed or determined by state institutions or authorized officials through procedures stipulated in laws and regulations, as referred to in Article 1 number 2 of Law No. 12 of 2011 concerning the Establishment of Laws and Regulations. Court decisions in the sense of jurisprudence (court decisions that have permanent legal force) are one of the legal sources, in addition to laws and regulations, treaties and doctrines. [2]

Based on the provisions of Article 28 H paragraph (4) of the 1945 Constitution of the Republic of Indonesia stipulates that "everyone has the right to have personal property rights and these property rights must not be arbitrarily taken over by anyone". Moreover, the placement of property rights in chapter XA on Human Rights, shows that property rights are part of human rights (HAM).[3] Thus, this provision stipulates that private property rights are guaranteed by the constitution so that they cannot be taken arbitrarily by anyone. The historical perspective of Article 28 H paragraph (4) of the 1945 Constitution of the Republic of Indonesia, shows the essence of land as property rights that also have a social function. However, the social function is followed up with appropriate compensation, in accordance with laws and regulations.[4]

This type of case, if observed, can be categorized as a conflict of land control and ownership. This conflict occurs due to differences in perceptions, values or opinions regarding the status of tenure over certain land that are not or have not been attached to rights, or that have been attached to rights by certain parties. A.A Putu Dendi is the heir of I Gusti Pt Enjeg while in the past when he was still alive, I Gusti Pt Enjeg sold his land to I Ketut Tama, but in 2024 suddenly A.A Putu Dendi wanted to register his land/Land Registration for the first time, but the application was rejected because the land plot had been occupied by I Ketut Tama for more than 20 (twenty) years. After finally A.A Putu Dendi sued I Ketut Tama with Case No. 833/Pdt.G/2019/PN.Dps where the case was won by I Ketut Tama, after being won by the defendant (I Ketut Tama), the plaintiff (A.A Putu Dendi) appealed to the High Court and continued to the Court of the Republic of Indonesia, and the Review to the Supreme Court but the lawsuit was rejected, won again by I Ketut Tama. Because based on this, I Ketut Tama has strong evidence, namely the Deed of Sale and Purchase where the physical control of the land plot in question has been controlled for more than 20 (twenty) years so that it is in accordance with the provisions of Article 24 paragraph (2) of Government Regulation of the Republic of Indonesia No. 24 of 1997, concerning Land Registration jo Article 61 of the Regulation of the Minister of Agrarian Affairs Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration. In

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the end, where it can be followed up for the application for land registration at the Badung Regency Land Office with Court Decision No.833/Pdt.G/2019/PN.Dps which has permanent legal force (*incraht*).

Court decisions are not limited to the scope of the district court, in the type of decision that will be studied the mechanism for registering land rights, one of the court decisions related to land and will be reviewed is Case No. 833/Pdt.G/2019/PN.Dps which in its ruling states that it can be followed up. A.A Putu Dendi filed a lawsuit with the District Court with Case Registration No 833/Pdt.G/2019/PN.Dps withdrawn I Ketut Tama as the defendant. Remembering, the object of the land that is in dispute does not yet have a certificate or is still in the form of pipil-persil as proof of land rights. Of course, it affects the guarantee of legal certainty for land rights holders in Indonesia.

Application for Land Registration based on Denpasar District Court Decision No. 833/Pdt.G/2019/PN.Dps jo. Denpasar High Court Decision No. 79/PDT/2020/PT.Dps jo. Supreme Court Decision No. 1301 K/Pdt/2021 jo. Supreme Court Decision for Review No. 990 PK/Pdt/2022 requested by I Ketut Tama can be followed up. This happened in the Denpasar District Court Decision No. 833/Pdt.G/2019/PN.Dps which has strengthened the lawsuit from the winning party to be able to carry out the first-time land registration/conversion process.

Based on Government Regulation Number 24 of 1997 concerning Land Registration, there are several steps in land registration. Article 11 of this Government Regulation on Land Registration stipulates that the implementation of land registration includes land registration activities for the first time and maintenance of land registration data." Article 12 paragraph (1) of the PP, further regulates land registration activities for the first time, which includes the collection and processing of physical data; proof of rights and bookkeeping; issuance of certificates; presentation of physical data and juridical data; storage of general lists and documents.

Based on the explanation that has been written in the background section, the following legal problem formulation is prepared: What is the legal position of a court decision that has permanent legal force in the process of registering land ownership for the first time?

### **RESEARCH METHODS**

The legal research method chosen is a normative juridical legal research method. The approach used includes a legislative approach and a legal concept analysis approach.[5] This method makes it possible to analyze in depth various aspects of law related to the research topic, both in terms of applicable legal regulations and the underlying concepts or theories.

### **RESULTS AND DISCUSSION**

#### **Legal Status of Court Decisions That Have Permanent Legal Force in the Process of Land Title Registration for the First Time**

The provisions of Article 24 of the 1945 Constitution of the Republic of Indonesia mean that the judicial power exercised by the Supreme Court and the Judiciary under it as well as the Constitutional Court, aims to uphold law and justice. That way the court decision is loaded with justice, which must be followed up.[6] The position of court decisions in land registration is very important to maintain legal certainty, protect ownership rights, and facilitate the effective resolution of land disputes within the legal system. Parties involved in land-related legal proceedings should ensure that the court decisions they obtain are properly registered in order to obtain maximum legal protection.[7] The function of land registration is to obtain a strong proof tool about the legality of legal acts regarding land. However, for certain legal acts, land registration has another function, namely to fulfill the validity of the legal act. This means that without registration, the legal act does not occur legally according to the law. This for example applies to mortgage registration or dependent rights. Before being registered at the Land Office, the mortgage or dependent rights were not legally binding. Registration of sale and purchase or grant or exchange does not serve to make the act legal, but only to obtain evidence of the legality of the act. The evidence is a certificate in which it is said that there is a legal act and that the owner is now the buyer or the recipient of the grant or the one who receives the exchange. [8]As previously described, land registration or registration of land rights will result in the issuance of a certificate of proof of land rights commonly called a land certificate to the party concerned which is valid as a strong means of proof of the land rights held by the party.[4]

#### **First Time Land Registration Process/Conversion**

Government Regulation of the Republic of Indonesia No. 24 of 1997, concerning Land Registration, in particular: Article 24 which states that:

For the purpose of registration of rights, land rights derived from the conversion of old rights are evidenced by evidence regarding the existence of these rights in the form of written evidence, information whose level of truth by the Adjudication Committee in systematic land registration or by the Head of the Land Office in sporadic land registration, is considered sufficient to register the rights, rights holders and rights of other parties who burden them.

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In the event that there is no or is no longer fully available the means of proof as intended in paragraph (1), the proof of rights can be carried out based on the fact of physical control of the land parcel concerned for 20 (twenty) years or more consecutively by the registration applicant and his predecessors, provided that:

The control is carried out in good faith and openly by the person concerned as the right to the land, and is strengthened by the testimony of a trustworthy person;

The control both before and during the announcement as referred to in Article 26 is not disputed by the customary law community or the village/sub-district concerned or other parties.

The purpose and purpose of the issuance of certificates in land registration activities is so that the right holder can easily get certainty of his rights, prove that he is the holder of his rights based on the Denpasar District Court Decision No. 833/Pdt.G/2019/PN.Dps and the Deed of Sale and Purchase Number: 29/1972 where I Ketut Tama (Defendant) is the winner of the case. The certificate is issued for the benefit of the right holder concerned in accordance with the physical data and juridical data that have been registered in the land book. With the registration of land rights or the granting of land rights to all objects of the right to use the land in accordance with its designation, there will be a guarantee of legal certainty, the granting of land rights is the authority of the State which is carried out by the government with the procedures specified in the legislation.

### **Systematic Land Registration Process**

Land registration systematically has two legal bases used in its implementation, namely: Government Regulation Number 24 of 1997 concerning Land Registration Article 1 number 10, Articles 8, 13-31 and Regulation of the Minister of Agrarian Affairs/Head of BPN Number 3 of 1997 (Implementer of Government Regulation 24/1997) Articles 46-72. As for providing legal certainty to land rights holders, an affirmation will be given on the extent of the evidentiary power of the certificate that is used as a handle to prove land rights. It is stipulated that as long as it has not been proven otherwise, the physical data and juridical data contained in the certificate must be accepted as correct data, both in daily legal acts and in court disputes, as long as the data is in accordance with what is stated in the survey letter and the land book concerned.[9]

In this study where I Ketut Tama (the defendant) can prove that he has a deed of sale and purchase in which he has occupied the land for more than 20 (twenty), based on the physical control of the land plot in question has been in accordance with the provisions of Article 24 paragraph (2) of the Government Regulation of the Republic of Indonesia No. 24 of 1997, concerning Land Registration jo Article 61 of the Regulation of the Minister of State of Agrarian Affairs Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 Year 1997 concerning Land Registration.[10]

### **Sporadic Land Registration Process**

Sporadic land registration is a land registration activity for the first time regarding one or several land registration objects in the area or part of the territory of a village/sub-district individually or in bulk land registration sporadically carried out at the request of interested parties, The sporadic land registration process is based on court decisions that include several stages:[3]

1. The applicant submits an application for land registration to the local Land Office by attaching a court decision that has permanent legal force (inkrah)
2. The Land Office will conduct research on juridical data (court decisions) and physical data of land
3. Measurement and mapping of land plots are carried out by surveyors from the Land Office
4. The results of the collection and research of juridical data along with the measurement results are announced for 60 days to give interested parties the opportunity to raise objections
5. After the announcement period ends, the physical data and juridical data are authorized by the Head of the Land Office
6. Bookkeeping of rights on land books and issuance of certificates

Land registration based on an inclusive court decision is intended to provide certainty of rights and legal protection for land rights holders by proving land certificates.[11] The first land registration according to the provisions of Government Regulation Number 24 of 1997 is that before being registered, it must be converted first, both systematically and sporadically. Through the institution of conversion of land rights that existed before the enactment of the UUPA, it is adjusted to the rights in the UUPA. For customary land rights that have written or unwritten evidence, where the conversion is carried out by the Adjudication Registration Committee acting on behalf of the Head of the Land Office for systematic purposes or carried out by the Head of the Land Office for sporadic purposes, the process is carried out by affirmation of rights, while for customary land rights that do not have evidence, the process is carried out by the process of recognition of rights. [12]

In the first series of land registration, the end of the land registration process is the provision of certificates of proof of rights which are commonly called certificates as strong proof of rights. The guarantee of the strength and legal certainty of the certificate issued through the recognition of rights is the same as the certificate issued as affirmed in Article 19 and Article 23 of the UUPA and Article 32 paragraph (2) of Government Regulation 24 of 1997 as long as the physical data and juridical data contained in the certificate are correct data and cannot be proven otherwise.[11]

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The first land registration is sporadic. The definition of Sporadic Land Registration based on Government Regulation Number 24 of 1997 Article 1 number 11 is a land registration activity for the first time regarding one or several land registration objects in the area or part of the territory of a village/sub-district individually or in bulk, meaning that all fees are also charged to the applicant.[6]

Sporadic land registration applications Initial activities of land registration are sporadically carried out at the request of the right holder concerned, including:

- a. Measurement Application
- b. Application for registration of new rights
- c. Application for registration of old rights
- d. applications for registration of transfer of rights and others.

The principle of safe is intended to show that land registration needs to be carried out carefully and carefully so that the results can provide a guarantee of legal certainty according to the (main) purpose of land registration.[13] Careful and careful registration is expected to bring benefits in terms of providing a high level of security. Security is the essence of land registration. Land owners/owners, people who buy or rent land, people who lend money with land security, neighboring landowners have the right to pass the land, and so on, each and everything must be safe. To achieve this sense of security, it is important to seek clarity of records regarding the definition of land parcels and identification/identification of the owner of the rights and interests of other parties.[13] Once the land rights are registered, they must be without any demands or subject only to certain exceptions. In land registration, it must also be considered whether there are demands, burdens or restrictions on land use/utilization. A registration that guarantees legal certainty must be able to reflect the data/records that define the land parcel and the description of its owner as well as the restriction of rights to an interest. A person has a sense of security in land ownership/control if the owner can use and/or utilize the land without interference from other parties. The security of land tenure is a question of fact. As a fact, it can mean regardless of the presence or absence of documentary evidence to state the truth. The security of land tenure does not only lie in proof of land ownership on a paper or record (in this case, a certificate).[14]

Thus, to obtain a sense of security in the use of land is not only based on the fact of land tenure alone, but also documentary evidence (written) in the form of land records (land certificates) is also needed. This security has existed as fact or fact, with or without any evidence to prove.[4] Testimony does not change the reality. The security of land tenure is a reality that does not depend on the existence of a right document (certificate) as proof of ownership, although if you have a document, it is important.

### CONCLUSION

A court decision can be a strong basis for changing or updating the land ownership status in the land registration record. This means that even if there is a previous record, a court decision with permanent force can be a new and legal basis, Land registration based on a court decision with force still provides stronger legal protection against claims or demands that may arise related to the ownership or rights to the land, By following a court decision with permanent force in the land registration process, creating legal certainty for the parties involved. This reduces the potential for future disputes related to the status of ownership or land rights, the juridical settlement of the registration of land rights based on the implementation of court decisions that have permanent legal force at the Badung Regency Land Office has run smoothly in accordance with the application, so that a new subject of rights can be found in accordance with legal certainty.

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