



## **PROCESS OF ISSUING OF CERTIFICATE OF OWNED RIGHTS ON LAND THROUGH LAND REGISTRATION BASED ON GOVERNMENT REGULATION NUMBER 24 OF 1997 CONCERNING LAND REGISTRATION IN ASAHAN DISTRICT IN 2019**

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### **Abstract**

*Land is very closely related to human life. Everyone certainly needs land. Even not only in his life, but even to death, humans still need a piece of land. Along with increasing humanity from year to year, while the amount of land that can be controlled by humans is very limited, then the land becomes a very crucial problem for humans. In addition, with the advancement of the people's economy and the national economy, more and more land is involved in economic problems such as buying and selling land, leasing land and land as collateral for loans at the bank. In everyday life the land is often a dispute even to the court. This arises because land has functions and meanings that are very important for people's lives, which makes people try to acquire land in various ways even by grabbing land owned by others. As a result of land disputes that can lead to prolonged conflicts between community members who are in dispute to prevent the spread of land disputes, the government registers land which will later give birth to land certificates. The existence of a issued land certificate is proof of ownership of a plot of land, here the holder of the certificate of land rights has received legal protection and is guaranteed by law on the land it owns, meaning if there is a land dispute where the certificate is held by the certificate holder the certificate holder is strong and the judge is obliged to consider the certificate of evidence as a valid and strong evidence in addition to considering other evidence.*

**Keywords:** *Issuance of Certificates, Land Registration*



## **A. Introduction**

Land is a primary need that concerns the lives of many people, and is one of the natural resources that is the main capital for development. Along with the increase in population, the need for land for housing, housing and development needs is increasing, while the land area is relatively fixed. At present the land is an investment object and results in higher land prices. These things often result in disputes, conflicts and land matters. In order to guarantee legal certainty and legal protection for landowners, a written, complete and clear land law instrument that regulates land registration must be available. Based on the provisions of Article 19 paragraph (2) letter c of the LoGA, the certificate of land rights is a "strong" proof tool, meaning: it must be considered correct insofar as it cannot be proven otherwise in court with other evidence.

Whereas the proof of rights is valid as a means of proof which means that the statements contained therein (by the judge) are true information, as long as and as long as there is no other means of proof that proves otherwise. In such a case, the court will decide the correct means of proof. In other words, with the opportunity for parties to make lawsuits against holders of land rights certificates, it can be concluded that the legal strength of the certificate of land rights is not absolute.

The certificate of land rights is the legal product of the State Administration Officer (TUN), the official intended is the Head of the Regency / City Land Office, the Adjudication Committee and the official who is delegated authority from the Head of the Regency / City Land Office, the legal product issued by the Official the authorities apply the provisions of State Administration Law, meaning: "a person as an official can only carry out an act which is covered as an act that is against the law either because of an error (schuld) or as a result of negligence in carrying out his legal obligations. For wrong or negligent actions that produce the wrong product legal certificate, both mistakes in the legal subjects in the certificate and errors in the law in the certificate. Which errors have been suspected can occur in various land registration processes.



Land registration with a negative publication system needs to be understood and understood, that the certificate of land rights can still be canceled if:

1. In the publishing process it contains elements of administrative law defects.
2. Because of court decisions that have obtained permanent legal provisions.

That the certificate holder is still possible to be sued by parties who feel entitled to the land, and if the party who feels entitled can prove otherwise with other evidence, and won in the court process and obtain a decision that has fixed legal provisions (inclusion).

## **B. Research Methods**

This study is a type of analytical descriptive research that is describing, describing, analyzing and explaining analytically the problems raised. This research was conducted by means of library research. The research material was obtained through a normative juridical approach, namely the legal approach by looking at regulations, both primary law and secondary law or approaches to problems by looking at the prevailing laws and regulations, literature, scientific works and opinions of experts and so on. SoerjonoSoekanto (1995: 13) says that normative legal research is legal research conducted by examining library materials or mere secondary data. Normative legal research includes research on legal systematics, research on the level of vertical and horizontal synchronization, comparison of law and legal history.

## **C. Research Location**

This research was conducted at the Office of the National Land Agency of Asahan Regency, North Sumatra Province, Indonesia. By taking data on land registration systematically and systematically in the Asahan Regency in 2019.

## **D. Research Results And Discussion Publishing Land Certificate**



In the Indonesian Agrarian Law book, BoediHarsono said that land registration is a series of activities carried out by the Government continuously, continuously and regularly, covering the collection, processing, bookkeeping and presentation and maintenance of physical and juridical data in the form of maps and lists, concerning fields plots of land and apartment units, including the granting of certificates as proof of their rights to plots of land that already have their rights and ownership rights to apartment units and certain rights that burden them.

The words "series of activities" refer to various activities in the implementation of land registration. The words "continuous" refer to the implementation of activities, that once started there will be no end. The word "regular" shows that all activities must be based on the appropriate legislation.

Land registration is a series of activities carried out by the government to collect physical data and juridical data from the land parcels to be registered. So it is said, that land registration is an administrative process which is the authority of the Land Office to produce a certificate as a sign of proof of ownership rights to a piece of land.

The juridical basis of regulation regarding the implementation of land registration in Indonesia is regulated in the Basic Agrarian Law (UUPA) Article 19 paragraph (1) which reads as follows:

To ensure legal certainty by the Government, land registration in all regions of Indonesia is held according to provisions regulated by government regulations.

The Government Regulation referred to in the provisions of the aforementioned article is Government Regulation (PP) No. 24 of 1997 concerning Land Registration as a refinement of PP No. 10 of 1961 which in the course of approximately 36 years was deemed not to have given satisfactory results in the implementation of land registration. The issuance of PP 24 of 1997 was motivated by the awareness of the increasing importance of the role of land in development which increasingly requires the support of legal certainty in the land sector. With the enactment of PP No. 24 of 1997 concerning the new Land Registration,



all existing laws and regulations as a result of existing PP No.10 of 1961 still apply, insofar as they are not contradictory or replaced based on PP No. 24 of 1997.

As a result of the land registration process, the holders of the rights to the land that are registered are given proof of entitlement called "Certificate". Certificate according to PP No. 24 of 1997 is one sheet of proof of rights document containing juridical data and physical data of the object registered, for each right already recorded in the land book. Juridical data is taken from the land book, while physical data is taken from a measuring letter. By continuing to use a negative publicity system that contains positive elements in land registration activities in Indonesia, then the proof of title (certificate) applies as a strong evidentiary tool, as stated in Article 19 paragraph (2) letter c, Article 23 paragraph (2) , Article 32 paragraph (2) and Article 38 paragraph (2) UUPA. This means that as long as it cannot be proven otherwise, the physical data and juridical data contained in the certificate must be accepted as correct data, both in daily legal actions and in court cases.

To understand more deeply, the issuance of certificates of property rights on land we must re-study the classification of objects as stipulated in the Civil Code (Provisions of Article 612-616). In principle, objects can be classified into 2 parts, namely:

a. Moving objects

Moving goods because of their nature are goods that can be moved on their own or moved (Article 509 KUHPdt). Ships, boats, mine canoes, windmills and wood stockpiles installed on boats or which are detached and such items are movable goods. (Article 510 of the Criminal Code)

b. Immovable object.

As proof of legitimate rights and possess the power of perfect proof. With the issuance of certificates, legal certainty will be more guaranteed which includes:

1. Legal certainty about the subject, meaning that the issuance of a certificate of ownership rights on land in a juridical manner has



guaranteed that the person whose name is stated in the certificate as the owner of a certain land.

2. Certainty about the object, meaning by the issuance of certificates of ownership rights on land, both the location, extent and boundaries of the land are more secure because in the certificate matters relating to a land area are referred to as a picture of the situation contained therein.

With the creation of the two legal certifications above, we expect disputes or conflicts in the land sector to gradually decrease and this is actually the ultimate goal of issuing certificates. (Abdurrahman, 1995: 20) states that, even worse, the emergence of two or more certificates of evidence of the same land rights. This condition not only creates legal uncertainty but also harms the evidence holders of the right because among the many certificates, maybe only one is valid, the rest are legally flawed and this will be tested if there is a dispute between them in court.

The registration of this land was known as *RechtKadaster*. Land registration is a series of activities carried out by the government continuously, continuously and regularly, covering the collection, processing, opening and presentation and maintenance of physical and juridical data, in the form of maps and lists of plots of land and units of flats , including the issuance of certificates as proof of their rights to existing land parcels and Property Rights to the Flats and certain rights that burden them. Thus the definition of land registration in the general provisions of article 1 of government No.24 of 1997. Land registration was held to ensure legal certainty, this land registration was held to meet the needs of the community and the government. In fulfilling this need the government carried out land acquisition data, especially those involving landowners. The initial land registration was carried out for physical purposes (fiscal cadastre) and in terms of ensuring legal certainty as described above, the registration of land became *KadasterRecht*. For the first time Indonesia has a land registration institution with Government Regulation No. 10 of 1961, which was subsequently refined by Government Regulation No. 24 of 1997, and only took effect October 8, 1997. Before applying Government Regulation No. 10 In 1961 the *Kadaster*



Office was known as the Registration Office for land rights which was subject to the Civil Code.

Government Regulation No. 10 of 1961 is an order of Article 19 of the BAL No. 5 of 1960 which reads as follows:

1. To ensure legal certainty by the government, land registration is carried out in all regions of the Republic of Indonesia according to the provisions regulated by Government Regulations.
2. The registration in paragraph (1) of this article includes:
  - a. Measurement, determination and bookkeeping of land.
  - b. Registration of land rights and the transfer of these rights.
  - c. The granting of documents of proof of rights, which apply as a strong evidentiary tool.
3. Land registration is held keeping in mind the state and community conditions, economic traffic requirements and the possibility of implementation, according to the Minister of Agrarian considerations.
4. In Government Regulations regulated the costs concerned with registration include paragraph (1) above, provided that the people who are not able to be released from payment of these costs.

What has been ordered by paragraph (1) of Article 9 by the Government has been issued Government Regulation No. 10 of 1961, then paragraph (1) of Government Regulation No. 10 of 1961 is further emphasized as follows:

- a. To provide legal certainty and protection of the rights holders of a plot of land, a flat, and other registered rights so that it can be more easily proven as the right holder concerned.
- b. To provide information to interested parties, including the Government, so that younger people can obtain the data needed to conduct legal arrangements regarding plots of land and units of flats that have been registered.
- c. To organize a land administration order.

Clearly, Government Regulation No. 10 of 1961 which was amended with Government Regulation No. 24 of 1997 has enriched the provisions of Article 19 of the LoGA, namely:



- a. Whereas the issuance of certificates of land rights, the owners are given legal certainty and legal protection.
- b. In the information age, the Kantor Pertanahan as a front office must properly maintain every information needed for a plot of land, both for self-government so that it can plan the State's development and also for the community itself. This information is open to the public, which means that it can be given whatever information is needed on a piece of land / building that exists.
- c. For this reason, it is necessary to have an administrative order in the land which is a natural thing.

Actually in the past in some areas in several regions, registration of land for fiscal purposes was held, but the community was also given a juridical meaning. This land registration is based on local customary law, and some are based on regulations made by local authorities, and some are based on national regulations, for example:

1. Registration held by the Land Product Tax Office (lanad rante) even though the land registration is administrative in accordance with the relevant regulations, but behind that the community considers the tax certificate as if it is proof of the right to the land affected by the tax, they not feel safe before the tax letter is in his hand. Therefore, the tax letter if it fulfills several provisions in the conversion regulation can be used as the right for the converter.
2. The regulation of Subak land held by Subak officials in Bali based on local customary law.
3. Registration of Gemeente land rights in Medan which is held based on the Gemeente Medan regulation.
4. Land registration held in the privileged areas of Yogyakarta based on regulations issued by Yogyakarta consultants.

In the explanation of Government Regulation No. 10 of 1961 concerning Land Registration stated that the bookkeeping of a right in the land book list on behalf of someone does not involve the person who should be entitled to the land will lose his rights. The person can still sue the rights of the person registered in the land book as the person entitled.



So, the method of registering rights stipulated in Government Regulations is not positive, but negative.

In the transfer of rights, the principle of *nemo plus juris* is applied to protect the holders of actual rights and the principle of "good faith", which means protecting people who are in good faith to obtain a right from the person who is suspected of being the rightful holder of rights. This principle can be used to provide evidence strength for maps and general lists available at the Land Agency Office.

In the principle of *nemo plus juris*, protection is given to the actual rights holders, then with this principle, there is always the possibility of a claim to registered literacy from people who feel as the real owner.

As for the principles of implementing Land Registration as stipulated in Article 2 PP No. 24 of 1997 are as follows:

- a. The Simple Principle, that in land registration is intended so that the basic provisions and procedures can easily be understood by interested parties, especially holders of land rights.
- b. Safe Principle, that land registration is intended to be carried out carefully and carefully so that the results can provide legal certainty in accordance with the purpose of registration of the land itself.
- c. Affordable Principle, that in land registration is intended to be affordable for parties who need it, especially by paying attention to the needs and capabilities of the weak economic group. Services provided in the context of implementing land registration must be affordable for those who need it.
- d. The Latest Principle, that in the implementation of land registration, there is adequate equipment in maintaining the data. Available data must show the latest state. For this reason, it is necessary to follow the obligation to register and record changes that occur later. This principle requires that land registration data be maintained continuously and continuously, so that the data stored in the Defense Office is always in accordance with the real conditions in the field and the community can obtain information about the correct data at any time.



- e. The Open Principle, that in registering land, it should always be open to all parties, so that those who need information about a land will find it easy to obtain the necessary information.

The land registration system used in a country depends on the legal principle adopted by the country in transferring its land rights. There are 2 kinds of legal principles, namely the principle of good faith and the principle of *nemo plus juris*. Even if a country adheres to one of the legal principles / land registration system, but which is purely adhering to one of the legal principles / land registration systems, it may be said to be nonexistent. This is because both the legal principles / land registration system both have advantages and disadvantages so that each country seeks its own solutions.

The principle of good faith reads: the person who obtains a right in good faith will continue to be the legal right holder. This principle aims to protect people of good faith. In order to protect this well-intentioned person, it is necessary to have a general list that has the strength of evidence. The registration system is called a positive system. It is different from the principle of *nemo plus juris* which reads: people cannot transfer rights beyond the rights that are available to them. This means that the transfer of rights by unauthorized persons is null and void. This principle aims to protect actual rights holders. Based on this principle, the actual right-holders will always be able to reclaim their rights registered in anyone's name. Therefore, the list generally does not have the strength of evidence. The land registration system is called a negative system.

In a positive system, where the list generally has the strength of evidence, the registered person is the legal right holder. The advantage of this positive system is that there is certainty from the rights holders, therefore there is an incentive for everyone to register their rights.

The disadvantage is that registration is not smooth and it can happen that registration on behalf of an unauthorized person can eliminate the rights of other entitled people. As with the negative system, the list generally does not have legal force so that the registration of someone in the General Register does not constitute proof that the person is entitled to the rights that have been registered. So, the registered person



will suffer the consequences if the rights obtained are from unauthorized people, so that people do not register their rights. This is the disadvantage of a negative system as for its advantages, registration is carried out smoothly and the actual rights holders are not harmed even if the registered person is not entitled.

Registration in Indonesia uses the Torrens System, it is only unclear from which country we copy the system, so in India, Malaysia and Singapore, the Torrens System is used.

There are several advantages of the Torrens System, including the following.

1. Establish unexpected costs
2. Exclude repeated checks.
3. Eliminate most land data records
4. Strictly state the legal basis.
5. Protect against difficulties that are not listed / in the certificate
6. Exclude counterfeiting
7. Keep maintaining the system, because maintenance of the system is borne by those who benefit from the system.
8. Eliminate the base of rights
9. Guaranteed by the state without limits.

The registration system used is a registration of titles system, as used in the implementation of land registration according to Government Regulation No. 10 of 1961, not a certificate registration system. This can be seen from the existence of a land book as a document that contains juridical data and physical data collected and presented and the issuance of certificates as proof of registration rights.

Indonesia (UUPA) in the implementation of land registration, the publication system used is still according to PP No. 10 of 1961, namely "a negative publication system that contains positive elements". In order to provide legal certainty and legal protection in terms of land ownership even though the publication system used is negative, PP No. 24 of 1997 has given an affirmation as outlined in the provisions of Article 32 paragraph (2). The contents of the article clearly show that there is a change in the guarantee of the strength of proof of the certificate that leads



to "absolute" strength, where this basically contradicts the system adopted by the LoGA in Article 19 paragraph (2) letter c, that: "certificate as a strong evidence".

The Positive Publication System contains elements of the State guaranteeing the correctness of the data presented. The data contained in the land book and the measuring letter are proof of absolute rights. The acquisition of land in good faith by means of those regulated by applicable laws and regulations, based on the data presented and followed by the registration obtains absolute legal protection, even though it turns out later that the information contained in it is incorrect. In this system prospective buyers and prospective creditors can absolutely trust the truth of the data presented by the Land Registration Agency and will be protected by law, if in good faith they do legal actions based on that data. In this case the injured party receives compensation in other forms.

The implementation of registrations that use a negative public publication system does not guarantee the correctness of the data presented in the land book and the measurement letter. Even though it has been registered on behalf of a person or legal entity as the right holder. In this system, the right holder can still file a claim to regain the land he owns, if the legal act of transferring rights or imposition of rights is proven to be legally defective or not carried out by the rightful party. What determines the validity of the transfer to another party and the legality of the imposition that is done is that it is not legal for the underlying legal action not to carry out the registration.

In a negative publicity system, land registration does not provide guarantees, that the land ownership that is acquired or imposed on the rights in question in the future will not be contested. In this system the proof of title (certificate) applies as a strong evidence tool. That is, the statements contained therein have legal force and must be accepted as true information, for as long as there is no other proof of evidence that proves otherwise. Here the court will decide which evidence is correct. In a public publication system, the legal principle "nemo plus" applies, that is, that a person cannot give or move rights beyond what he himself has.



To overcome weaknesses and to provide legal protection to parties who obtain land in good faith by a State that uses a negative publicity system, it generally uses an institution known as the "acquisitieve verjaring" institution or "reverse possession" institution. That is if the right recipient of the good intention acts decisively as the owner and the concerned person controls the land in a real and open manner for many years, without any other party suing, then by law he is determined as the owner, whose ownership rights can no longer be contested, nor by parties who can prove to be the real owner.

Indonesia does not use a purely negative publicity system, because the registration system used by UUPA is a "registration of titles" system, where in the implementation of land registration, it is not the registration document but the rights created and the changes thereafter. the right functions as a juridical data source to register the rights given in the land book, before the registration of the rights in the land book, the Land Office must carry out the truth testing of the data contained in the deed in question.

Some things that are considered by the community are motivated in registering community lands:

1. Land registration produces information, both for the government and for the community. With the availability of accurate and factual information, for interested parties will make it easier to make decisions in carrying out legal actions. For example, for prospective buyers, they will feel confident that the land they will buy is not in trouble. For creditors, there is no doubt because the land certificate is the guarantee for the debt, the land is clear and has no problems. Likewise, the government will make it easier to make city plans and physical development plans.
2. Being the material for the study and evaluation of the implementation of further systematic land registration, if the Adjudication treatment brings a lot of benefits, the quality of services and the registration system will be further improved.
3. Can be used as a reference in the framework of making a spatial plan, namely by analyzing and arranging land use. The implementation of



the spatial plan must first regulate land use. Furthermore, spatial plans and land use plans can be used to support economic development on the basis of administrative boundaries.

Based on the research that has been done by the writer, it can be seen several obstacles that arise in implementing Land Registration in Asahan Regency, namely:

1. Lack of citizen knowledge about land law, so that many letters of transfer of adjudication and ownership of ownership held by citizens are only receipts and are found to be incomplete.
2. The number of adjudication and prona participants is of low economic condition, so the obligation to pay Land and Building Tax for many years is not paid so that to determine the BPHTP payment and pay it becomes an obstacle for them.
3. A lot of time has been taken to provide guidance on disputes between parties, because the issue of proof of ownership or boundaries in the field does not match the proof of ownership with the one next to it.

Efforts made to overcome the obstacles that arise in implementing the land registration are by conducting legal counseling to the community, so that citizens get adequate legal information and knowledge to support the implementation of good land registration. For BPHTB payments (Fees for Acquisition of Land Rights) for residents who are not able to have obtained relief in payment.

## **E. Conclusion**

Land is a primary need that concerns people's lives a lot, and the main capital for life.

Today the land is the object of investment and causes the value of the land price to be high and disputes often occur because of this. Due to conflicts and cases caused by land disputes there is a law in the Constitution that regulates land registration. For this reason, their landowners receive complete and written evidence in the presence of letters of proof of ownership of the land that are legally valid as a basis and evidence of land ownership in the form of land certificates. Land



certificates are strong legal evidence of ownership of land that we recognize as ours.

What is meant by orderly land law is that all persons or legal entities that control or use land have a legal relationship with the land concerned according to the applicable laws and regulations. From this explanation, it can be said that every party that owns or controls one or several related plots of land according to the prevailing laws and regulations. From this explanation it can be said that each party that owns or controls one or several plots of land is proven by a certificate.

Systematic land registration is a land engagement process which in principle involves collecting physical and juridical data. In the land certificate contained physical data and juridical data as a reconstruction of the subject and object of land rights. Thus the certificate holds accurate and factual data which is a guarantee of legal certainty. Thus, if every land parcel has been registered with a land certificate as a valid proof of ownership, undoubtedly seizure and land disputes can be eliminated or at least eliminated.

## **F. Suggestion**

To the people who have not registered their land, immediately register the land to get a land certificate, this is also to prevent bad intentions from irresponsible parties. To the public in general, to immediately apply for a replacement certificate if the certificate of land rights is lost for legal certainty in the area of land they have. For the legislators, it should make a regulation that regulates acts of crime or bad faith related to the issuance of substitute certificates to prevent and provide deterrent effects for persons or parties who often commit acts of fraud against holders of land rights. Land offices in all regions of Indonesia, to immediately work to serve the needs of the community with sincerity and not asking for more fees than the stipulated rules regarding the costs of issuing certificates or rejecting any fraudulent actions requested by parties that are not good.



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