

# **Strength And Guarantee of Legal Certificate of Written Evidence After The Issuance of Permen ATR No. 6 Years 2018**

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## **ABSTRACT**

Research with the topic of Strength and Guarantee of Legal Certainty of Certificates as Written Evidence after the issuance of Ministerial Regulation No. ATR. 6 of 2018, referring to the principle of publicity which is used to test the strength of proof of certificates, namely strong or not strong and absolute or not absolute, there is a ambiguity between land registration based on PP. 24 of 1997 according to Article 26 paragraph (1) PP No. 24 of 1997, notification to the public for 60 (sixty) days and the principle of publicity Article 11 paragraph (1) Permen ATR No. 6 of 2018 for 14 (fourteen) working days. The matter at issue is related to the strength and guarantee of legal certainty for the certificate as written evidence. Research using the approach to legislation and a concept approach obtained a conclusion, that: The principle of publicity in PP no. 24 of 1997 for a period of 60 working days and Permen ATR No. 6 of 2018 for 14 working days, both have not guaranteed legal certainty because the publications used are negative leading to positive, where the registrant is considered the owner and other parties can still file a cancellation lawsuit as long as they can prove that the registrant registered the land in bad faith.

**Keywords:** Publication, Certificate, Legal Certainty

## **I. INTRODUCTION**

The government in an effort to ensure legal certainty, organizes land registration throughout the territory of the Republic of Indonesia according to the provisions stipulated in a Government Regulation, as referred to in Article 19 paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Regulations ( UUPA) (Nair, 2011). The above shows that the government is aware of the importance of land registration to ensure legal certainty for the holder, and understands that there are still many parcels of land throughout Indonesia that have not been registered, of course, do not have proof of rights, which serve as a strong evidence. as Article 19 paragraph (2) letter c BAL. Land registration is “a series of activities, carried out by the Government, continuously, continuously and regularly, including the collection, processing, bookkeeping, and presentation and maintenance of physical data and juridical data, in the form of maps and lists, regarding land parcels, issuing letters proof of rights for parcels of land that already have rights. Land parcels are registered, certificates are issued as evidence of land rights and the authority to issue them is the Land Office. When a certificate is issued, it can be easily proven who the right holder is (Suwitra & Puspadma, 2018).

Land registration to guarantee legal certainty to holders whose names are listed in the certificate, is in line with the objectives of land registration as stated in the General Elucidation of the BAL, namely:

- a. lay the foundations for the preparation of the National agrarian law, which will be a tool to bring prosperity, happiness and justice to the State and the people, especially the peasants, in the framework of a just and prosperous society;
- b. laying the foundations for unity and simplicity in land law;
- c. laying the foundations to provide legal certainty regarding land rights for the whole people.

Land registration is to ensure legal certainty, that legal certainty is a guarantee that the law must be implemented in a good way. Legal certainty requires efforts to regulate law in legislation made by authorized and authoritative parties, so that these rules have a juridical aspect that can guarantee certainty that the law functions as a regulation that must be obeyed. Normative legal certainty is when a regulation is made and promulgated with certainty, because it regulates clearly and logically. It is clear in the sense that it does not cause doubt (multi-interpretation) and logical in the sense that it becomes a system of norms with other norms so that they do not clash or cause norm conflicts. Norm conflicts arising from uncertainty in the rules can take the form of norm congestion, norm reduction or norm distortion. The importance of legal certainty over land tenure, especially in the life of the state, therefore the agrarian legislation in Indonesia (UUPA) regulates land registration regulated in Government Regulation No. 24 of 1997 (PP No. 24 of 1997), in order to guarantee legal certainty for rights holders. on the land in question. In order to guarantee legal certainty for holders of land rights, according to the law a "certificate" is a strong means of proof so that the owner is given legal certainty and legal protection. With the certificate, the holder of land rights will be guaranteed its existence (Putri et al., 2020).

Land registration, the registrant is given proof of title, which acts as a strong means of proof known as a certificate, in which it consists of a copy of the Land Book containing juridical data, then attached with a measuring document containing physical data, then bound together. and given a green cover with a picture of an eagle. To test the strength of the certificate, the land registration system is also known as a publication system (Supriadi et al., 2020).

Land registration is carried out in accordance with statutory regulations and carried out as PP No. 24 of 1997. Related to the principle of publicity used to test the strength of proof of certificate, namely strong or not strong and absolute or not absolute, there is a ambiguity between land registration based on PP. 24 of 1997 with land registration based on the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of BPN of the Republic of Indonesia Number 6 of 2018 concerning Complete Systematic Land Registration (Permen ATR No. 6 of 2018).

In Article 26 paragraph (1) PP No. 24 of 1997 that the list and maps of the relevant land parcels or parcels as a result of the measurement are announced for 30 (thirty) days in systematic land registration or 60 (sixty) days in sporadic land registration to provide opportunities for parties who interested parties file an objection, while Article 11 paragraph (1) of the Minister of ATR No. 6 of 2018 it is stated that "to fulfill the principle of publicity in proving land ownership, an announcement of Physical Data and Juridical Data is carried out which is published at the Land Office and the local Kades/Kelurahan Office for 14 (fourteen) working days". The existence of ambiguity in the application of the principle of publicity makes the absence of a legal certainty for certificates issued based on the Minister of ATR No. 6 of 2018. The matter that needs to be disputed is related to the strength and guarantee of legal certainty for certificates as written evidence after the issuance of Permen ATR No. 6 of 2018.

## **2. RESEARCH METHODS**

Normative legal research as a process to find a rule of law, legal principles, and legal doctrines in order to answer the legal issues faced, namely the legal consequences of the PPAT delay in registering the deed of transfer of rights at the BPN Office during the Covid-19 pandemic in terms of laws and regulations in this case PP no. 24 of 1997. Primary legal materials are in the form of statutory regulations and secondary legal materials in the form of concepts of undergraduate opinion, journals and so on.

## **3. RESULT AND DISCUSSION**

### **Land Registration Land**

Registration for the first time, according to Article 1 point 9 of PP on Land Registration, land registration for the first time is a land registration activity carried out on land registration objects that have not been registered based on Government Regulation Number 10 of 1961 concerning Land Registration ( PP 10/1961) or PP Land Registration. For the first time, land registration was carried out through systematic land registration and sporadic land registration. Systematic land registration is a land registration activity for the first time that is carried out simultaneously which includes all land registration objects that have not been registered in the territory or part of the territory of a village/kelurahan. Systematic land registration is carried out at the initiative of the government based on a work plan and carried out in areas determined by the minister (Gunadi, 2019). Sporadic registration is a land registration activity for the first time regarding one or several objects of land registration in the territory or part of the territory of a village/kelurahan individually or in bulk (Article 1 number 11 PP No. 24 of 1997).

Registration of publications, is used to test the power of proof of certificates, namely strong or not strong and absolute or not absolute (Frampton, 2018). There are two types of publication systems, namely the positive publication system and the publication system *negative*. The positive publication system uses a rights registration system, so there must be a Register or Land Book for the storage and presentation of juridical data, while the certificate is a letter of proof of rights. Recording a person's name in the register as a right holder makes a person the holder of the right to the land concerned, not a legal act of transferring rights (*Tittle by registration, The Register is everything*). This statement is the philosophical basis that underlies the Torrens system, namely with this positive publication system the state guarantees the truth of the data presented. In a negative publication system, the registration operator acts passively, only accepting what is stated by the applicant or registrant, in such conditions it is vulnerable to be disputed by third parties who feel more entitled to challenge the validity of the certificates issued (Magassing et al., 2018). This means that the negative publication system of the information contained in it has legal force and must be accepted as true information as long as and as long as there is no evidence to prove otherwise. Because it is vulnerable from third party lawsuits, because negative publications do not provide legal certainty to registrants as rights holders because the state does not have a guarantee of truth related to the physical data and yirudus data presented (Mulyono, 2022).

The land registration system in Indonesia as explained in Article 32 PP No. 24 of 1997, that the UUPA does not use a positive publication system, where the truth of the data presented is guaranteed by the State, but uses a negative publication system. In the negative publication system, the State does not guarantee the truth of the data presented, but nevertheless it is not intended to use the Negative publication system purely, so that land registration in Indonesia is more directed to a negative publication system with positive tendencies in land registration adopted by Indonesia (Hidayat, 2018). This means that the state does not guarantee the correctness of the data in the land certificate but the acquisition of the land is carried out in good faith. The publication system adopted now can be sued by other parties at any time, because they feel they have more rights or have stronger evidence than the land.

Land registration activities for the first time include:

1. Collecting and managing physical data, carried out by measuring and mapping activities which include:
  1. making registration base maps;
  2. determination of boundaries of land parcels;
  3. measuring and mapping land parcels and making registration maps;
  4. making land registers;
  5. making a measuring letter.

2. proof of new rights and old rights and their bookkeeping;
3. issuance of certificates;
4. presentation of physical data and juridical data;
5. storage of general lists and documents.

Maintenance of land registration data according to the provisions of Article 1 point 12 is a land registration activity to adjust physical data and juridical data in registration maps, land registers, name lists, measuring documents, land books, and certificates with changes that occur later. Rights holders are required to register changes to physical data or juridical data to the Land Office. Changes in physical data in question are when there is a separation, split or merger of land parcels that have been registered, while changes in juridical data are for example when there is an assignment or transfer of rights to a registered land parcel (Roesli et al., 2017).

Activities for maintaining land registration data are divided into:

1. Registration of transfers and assignment of rights, consisting of:
  1. transfer of rights;
  2. transfer of rights by auction;
  3. transfer of rights due to inheritance;
  4. transfer of rights due to the merger or consolidation of companies or cooperatives;
  5. encumbrance of rights;
  6. refusal of transfer registration and encumbrance of rights;
  7. others.
2. Registration of changes to land registration data, consisting of:
  1. extension of the term of land rights;
  2. splitting, separating and merging land parcels;
  3. sharing of joint rights;
  4. the abolition of land rights and ownership rights to apartment units;
  5. transfer and abolition of mortgage rights;
  6. changes in land registration data based on court decisions or stipulations;
  7. name change.

According to Urip Santoso, changes in juridical data can occur due to several things, namely:

1. transfer of rights due to buying and selling, exchanging, grants, income in the company, and other legal acts of transferring rights;
2. transfer of rights due to inheritance;
3. transfer of rights due to the merger or consolidation of companies or cooperatives;
4. encumbrance of mortgage rights;
5. transfer of mortgage rights;

6. the abolition of land rights, management rights, ownership rights to flat units and mortgage rights;
7. sharing of joint rights;
8. changes in land registration data based on a court decision or a decision by the head of the court;
9. change of name due to the change of name of the right holder;
10. extension of the term of land rights.

Furthermore, according to Urip Santoso, changes in physical data can occur due to:

1. splitting of land parcels;
2. separation of part or parts of the land parcel;
3. merging of two or more parcels of land.

PP Land Registration only regulates matters of a general nature, while more detailed provisions are regulated in a separate implementing regulation, so that the rules regarding land registration can be easier to follow technological developments (Ramadan et al., 2022). Currently, the implementing regulation of the PP on Land Registration is the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration (Perkaban 3 of 1997).

### **Land Registration and Publication Principles**

Land registration as referred to in Article 1 point 1 PP No. 24 of 1997 is a series of land registration activities carried out by the Government continuously, continuously and regularly, including the collection, processing, bookkeeping, and presentation and maintenance of physical data and juridical data, in the form of maps and lists, regarding land parcels, including granting a certificate of proof of rights for parcels of land that already have rights and ownership rights to flat units as well as certain rights that encumber them (Abdulai & Ochieng, 2017).

Land registration is carried out by the National Land Agency (BPN), where the implementation task is carried out by the Head of the Land Office with the assistance of the Land Deed Making Officer (PPAT) and other officials assigned to carry out certain activities. According to the provisions of Article 9 paragraph (1) of PP on Land Registration, the objects of land registration include:

1. Land parcels which are owned with property rights, cultivation rights, building use rights and use rights.
2. Land management rights.
3. Waqf land.
4. Ownership of the apartment unit.

5. Mortgage right.
6. country land

Land registration according to Soedikno Mertokusumo, in land registration there are two kinds of principles, namely:

1. principle *Specialiteit*, meaning that land registration is carried out based on certain laws and regulations, technically related to measurement, mapping, and registration of transitions.
2. The principle of *Openbaarheid* (principle of publicity), it is hoped that all people who feel they have rights can find out juridical data on the subject of rights, land status, transfer of rights, and the imposition of land rights, if any, at the Land Office, including submitting objections before the issuance of the certificate. replacement certificate, lost certificate or damaged certificate.

purpose of land registration according to Article 3 of the PP on Land Registration is as follows:

1. To provide legal certainty and legal protection to holders of rights to a plot of land, apartment units and other registered rights so that they can easily prove themselves as holders of the rights in question. The provision of legal certainty and legal protection is carried out by providing a certificate of land rights to the holder of the right in question. The guarantee of legal certainty that is the goal of land registration is certainty regarding the status of the registered land, certainty regarding the subject of rights and certainty regarding the object of rights.
2. To provide information to interested parties, including the Government, so that they can easily obtain the data needed to carry out legal actions regarding registered land parcels and apartment units. The form of the implementation of this information function is physical data and juridical data from land parcels and flats that have been registered open to the public.
3. For the implementation of orderly land administration. This is done by registering each plot of land and apartment unit, including registration in the event of a transfer, encumbrance and annulment of such rights.

The issuance of a certificate is a letter of proof of rights that applies as a strong means of proof regarding the physical data and juridical data contained in it, as long as the physical data and juridical data are in accordance with the data contained in the letter of measurement and the book of land rights in question. The strength of the certificate as evidence is free from third party objections, for that land registration activities must be informed to the public, known as the publication principle.



Land registration gives rights to the registrant and is included in the scope of material rights. Among the issuance of these material rights is the principle of publicity. The principle of publicity (*openbaarheid*) is an "announcement" to the public regarding the status of ownership. The announcement of material rights with guaranteed land rights is carried out through registration in the land book. Publicity occurs because of registration in the land book, so that the registration becomes evidence of registration. However, as stated by Mariam Darus Badruzaman that the registration agency does not only mean to provide strong evidence, but also creates material rights. Material rights to an object (land) occur at the time of registration. Without the material nature of land rights, it has not been related to "ownership" which means that as long as registration has not been carried out, land rights only have meaning for private parties while third parties do not know the change in the legal status of the land rights. Recognition of the new community occurs when the ownership of the object is registered through registration, then a general recognition is born regarding material rights to land.

The principle of publicity is the principle that requires registration of land rights at the local Land Office, which means that the birth of the principle of publicity from registration so that third parties know about it. It is further determined that the registration is carried out by recording it in the land book on the object of land rights and copying it in the certificate of land rights. The certificate as a proof of title is a strong means of proof regarding the physical data and juridical data contained in it, as long as the physical data and juridical data are in accordance with the data contained in the letter of measurement and the book of land rights in question, but still gives confirmation; petition to other parties to be able to prove the opposite regarding physical data and juridical data contained therein must be accepted as correct data, can sue for the cancellation of the certificate.

Regarding land registration issues, the Government in an effort to accelerate land registration, issued a Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the BPN of the Republic of Indonesia Number 6 of 2018 concerning Complete Systematic Land Registration (Permen ATR No. 6 of 2018). According to Article 1 number 2 of the ATR Regulation No. 6 of 2018 means Complete Systematic Land Registration (PTSL) is a Land Registration activity for the first time which is carried out simultaneously for all Land Registration objects throughout the territory of the Republic of Indonesia in one village/kelurahan area or other name equivalent to that, which includes data collection physical and juridical data regarding one or several objects of Land Registration for the purposes of its registration.

Simultaneous land registration activities for the first time as a government program certainly take less time, cost and energy than systematic land registration is a land registration activity for the first time that is carried out simultaneously which includes all land registration



objects that have not been registered in the territory or part of the territory of a village. /kelurahan, as stated in Article 1 number 10 of PP No. 24 of 1997 and sporadic land registration are land registration activities for the first time regarding one or several objects of land registration in the territory or part of the territory of a village/kelurahan individually or in bulk as referred to in Article 1 point 11 PP. 24 of 1997. But in reality the community responded differently, as happened at the BPN Office (BPN), that the number of land parcels that had not been registered and did not have a certificate was quite high.

PTSL was carried out in 2018 at PTSL Locations determined in the form of a Decree from the Head of the Regency/City BPN regarding the Determination of PTSL Locations. The determination of the location of the PTSL program is carried out with consideration of budget and human resources and is prioritized in villages where there are National Agrarian Operations Project (PRONA) activities and other similar mass certificate activities. After determining the location, then BPN formed an adjudication committee for the PTSL program.

The PTSL program in the target area was implemented starting in March 2018 which began with socialization. The socialization was carried out in the designated area and attended by the local BPN, village officials, the local police station and all residents in the area. After the socialization was carried out, the measurement and mapping of all land parcels in the program target area was carried out. The measurement is carried out by the Regency/City BPN. Registration for the PTSL program is carried out through each hamlet/RW, then all the files that have been collected at the village office will be processed by the Regency/City BPN. Some of the requirements that must be met by the community to participate in the PTSL program include a photocopy of ID card, photocopy of family card, land certificate (peg D), boundary sign/peg, and proof of payment of SPPT/PBB.

### **Study of Land Registration Publicity Conflicts from the Legislative System The**

Provisions of Article 7 paragraph (1) of Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Formation of Legislation (UU Formation Per Law) it is stated that "Types and hierarchy of Legislations consist of: the 1945 Constitution of the Republic of Indonesia, Decrees of the People's Consultative Assembly, Laws/Government Regulations in Lieu of Laws, Government Regulations; Presidential Regulations, Provincial Regulations and Regency/City Regional Regulations. In relation to the systematics of statutory regulations, "the enactment of a norm can always be returned to the enactment of a higher norm, and so on, so that it finally arrives at the Grundnorm". (Malaspina, 2022) According to Hans Kelsen, "the norm is tiered and layered in a hierarchical arrangement, where a higher norm applies, originates, and is based on a higher norm, and so on in the end this 'regressusbasic' stops at the mostnorm. This is called the basic norm (*Grundnorm*) which can no longer be traced to who

formed it or where it came from. This basic norm or commonly called *Grundnorm*, *basicnorm*, or *fundamentalnorm* is the highest norm whose validity is not based on and does not originate from a higher norm, but applies *presupposedly*, that is, it has been determined by the community first”.

Land registration in general, as the implementer of the UUPA has a higher position than Permen ATR No. 6 of 2018, even if it is related to the provisions of Article 8 paragraph (2) of the Law on Formation of Per Law, it is stated that the Legislation as referred to in paragraph (1) is recognized for its existence and has binding legal force as long as it is ordered by a higher Legislation or was established. based on authority. In the preamble to the Remembering Section, there is indeed a reference to the UUPA and PP No. 24 of 1997, but regarding land registration there is no article in PP No. 24 of 1997 regarding land registration is further regulated in a Ministerial Regulation.

In Article 26 paragraph (1) PP No. 24 of 1997 that the list and maps of the relevant land parcels or parcels as a result of the measurement are announced for 30 (thirty) days in systematic land registration or 60 (sixty) days in sporadic land registration to provide opportunities for parties who interested parties file an objection, while Article 11 paragraph (1) of the Minister of ATR No. 6 of 2018 it is stated that "to fulfill the principle of publicity in proving land ownership, an announcement of Physical Data and Juridical Data is carried out which is published at the Land Office and the local Kades/Kelurahan Office for 14 (fourteen) working days".

There is an ambiguity in the implementation of the publication principle in PP no. 24 of 1997 with ATR Regulation No. 6 of 2018, creates a legal uncertainty for certificates as evidence of rights as the purpose of land registration is to provide legal certainty. But what does it mean if land registration still uses negative publications but leads to positive publications, the holder of the land rights certificate does not yet feel safe from the possibility of a third party lawsuit that can prove that the registrant has bad intentions.

#### **4. CONCLUSION**

Publicity of land registration as referred to in Article 26 paragraph (1) PP No. 24 of 1997 was announced for 30 (thirty) days in systematic land registration or 60 (sixty) days in sporadic land registration, and the publication of Article 11 paragraph (1) Permen ATR No. 6 of 2018 the announcement of Physical Data and Juridical Data published at the Land Office and the local Kades/Kelurahan Office for 14 (fourteen) working days does not guarantee legal certainty because the publications used are negative and lead to positive. Registrants are still vulnerable to being sued by third parties as long as they can prove that the registrant has bad intentions in registering land rights, so that the certificate is legally flawed.

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