

## SETTLEMENT AND IMPLICATION OF SAFE PRINCIPAL DYSFUNCTIONS INCOMPLETE SYSTEMIC LAND REGISTRATION IN SRAGEN REGENCY

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### ABSTRACT

*Land registration is one of the activities to ensure legal certainty in land law in Indonesia, one of which is land registration through a government program, namely Complete Systematic Land Registration, from now on referred to as PTSL, the purpose of holding the PTSL program is to accelerate the implementation of land registration in Indonesia. However, with the acceleration of the PTSL program, it caused several problems, one of which was the emergence of multiple or overlapping certificates wherein one land location there were 2 (two) certificates with different ownership rights numbers so that the purpose of holding PTSL to provide legal certainty was not achieved, so that the certificates produced from the PTSL program may be possible without legal certainty, the purpose of this research is to find out that the implementation of land registration through the PTSL program in Sragen Regency has met the safe principle, namely regarding Accuracy and thoroughness in the performance of PTSL as stated in Article 2 of PP 24/1997 concerning Land Registration and Article 2 of Permen ATR/KBPN No. 6/2018 concerning Complete Systematic Land Registration, and completion of the emergence of multiple certificates resulting from a complete systematic land registration program.*

Keywords: PTSL, Secure Principles of Land Registration, Completion of Multiple Certificates.

### INTRODUCTION

Land is an essential part of human life. Every human being wants to own or control it; thus, it can lead to a dispute between humans. Every owner of land rights is required to register or register rights as regulated in defense law in Indonesia.<sup>1</sup>

*Article 19 Law Number 5 of 1960 states that to guarantee legal certainty of land ownership, the Government conducts the land registration that covers all the regions of the Republic of Indonesia. The implementation of land registration is regulated in Government Regulation Number 24 of 1997 concerning Land Registration. The main objective of land registration is: a) To give legal certainty and legal protection to the owner of rights on land, apartment unit and other registered rights so that they can easily prove that they are an owner of the rights concerned. b) To give information to concerned parties to quickly get the required data in taking legal acts about registered land and apartment unit. c) For orderly land administration.<sup>2</sup>*

Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 6 of 2018 concerning Complete Systematic Land Registration from now on referred to as Minister Regulation of ATR/KBPN No. 6/2018 is a form of policy regulation from PP 24/1997, the meaning of PTSL listed is registration activities land for the first time which is carried out simultaneously for all objects of Land Registration throughout the territory of the Republic of Indonesia in one village area or other names at the same level, which includes the collection of biological data and juridical data regarding one or several objects of Land Registration for registration.<sup>3</sup>

The purpose of complete systematic land registration (PTSL) is to realize the provision of legal certainty and legal protection of community land rights based on simple, fast, smooth, safe, fair, equitable and open and accountable principles.<sup>4</sup>

*Implementing the Complete Systematic Land Registration (PTSL) program has received many positive responses from various circles of society and helps the community obtain legal certainty. The PTSL program is a program that is simultaneously Implemented for all regions in the Republic of Indonesia. As has been explained that PTSL uses the 3Mfactor, namely Spread, Thorough, Evenly. This program is from BPN through one door, namely the Kelurahan or something equivalent. Therefore, it requires accurate and fast communication and information distribution to disseminate all matters concerning the PTSL program, such as mapping, data collection, both physical and juridical data validation.<sup>5</sup>*

However, in implementing the land registration process through the complete systematic land registration program (PTSL), there are many problems, one of which is the issuance of multiple certificates. Issuance of a new certificate even though the certificate is still guaranteed in one of the banks.<sup>6</sup> Therefore, this article will discuss the principle of safety in the implementation of PTSL in the Sragen Regency and the resolution of the emergence of dual certificates in the PTSL program in the Sragen Regency.

<sup>1</sup> Arif Tanri, et.al, (2020), *Kepastian Hukum Hak Atas Tanah Melalui Pendaftaran Tanah Sistematis Lengkap*, NOTARIUS, Volume 13 Nomor 2, page 777

<sup>2</sup> Listyowati Sumanto, *Future On Publication System Of Land Registration In Indonesia*, International Journal Of Scientific & Technology Research Volume 9, Issue 03, March 2020, page 1399

<sup>3</sup> Article 1 paragraph (2) Minister Regulation of ATR/KBPN Number 6 the Year 2018

<sup>4</sup> Article 2 paragraph (2) Minister Regulation of ATR/KBPN Number 6 the Year 2018.

<sup>5</sup> Fairus Augustina Rachmawati, et al., *Integrated Land Registration System: Between Legal Certainty and Challenges (Case of Semarang City)*, Indonesia Journal of Advocacy and Legal Service, Vol 3 No 2 2021, page 8

<sup>6</sup> Puspo Wardoyo, *Buntut Pemalsuan Syarat PTSL dan Sertifikat Ganda*, Kades Bonagung Diperiksa di BPN Sragen. Mengambil dari <https://joglosemarnews.com/2019/11/buntut-pemalsuan-syarat-ptsl-dan-sertifikat-ganda-kades-bonagung-diperiksa-di-bpn-sragen>. [ accessed at : July 23rd, 2020]

## RESEARCH METHODS

This research uses normative research methods or doctrinal legal research; doctrinal research is a process to find the rule of law, legal principles, and legal doctrines to answer the legal problems faced. Normative legal research is carried out to produce new arguments, theories or concepts as prescriptions in solving issues at hand.<sup>7</sup> Normative legal research does not always connote juridical norm research but also find the truth based on scientific logic from the normative side.<sup>8</sup> The author also uses a statute approach and a conceptual approach in this article.

## DISCUSSION

### 1. Safe Principles in the Implementation of Complete Systematic Land Registration in Sragen Regency

According to Boedi Harsono, land registration is a series of activities carried out by the Government on an ongoing and regular basis, including the collection, processing, bookkeeping and presentation and maintenance of physical and juridical data in the form of maps and lists, regarding land parcels and apartment units, including granting of certificates as proof of rights for plots of land that already have rights and ownership rights to flat units as well as certain rights that burden them.<sup>9</sup>

The Indonesian Government holds land registration covering all areas in Indonesia to regulate the legal relationship between the subject and object of land parcels.<sup>10</sup> Based on Article 19 paragraph (1) of the UUPA (BAL), land registration is carried out to provide legal certainty and legal protection to the community. The implementation of the land registration is an instruction given to the Government, in this case, the National Land Agency, whose performance is at the Sragen Regency Land Office.<sup>11</sup>

The purpose of holding PTSL, as stated in article 2 paragraph (2) Minister Regulation of ATR/KBPN 6/2018, is to provide legal certainty and protection of land rights based on simple, fast, smooth, safe, fair, equitable and open and accountable principles, to improve welfare. And the prosperity of the people and the economy of the country and preventing land conflicts.

Based on Article 2 paragraph (2) of PP 24/1997, there are several principles in the implementation of land registration as follows:

- 1) The simple principle means that interested parties, predominantly negative holders, can understand the main provisions and procedures for implementing land registration.
- 2) The principle of security means that land registration is carried out carefully so that the results can guarantee legal certainty according to the purpose of the land registration itself.
- 3) The principle of affordability means that it is affordable for the parties to pay attention to the needs and abilities of the weak economic groups. The services provided in land registration must be affordable to the parties who need them.
- 4) The up-to-date principle means adequate completeness in its implementation and continuity in the maintenance of land registration data. The available data must show the current state of affairs, so that it is necessary to follow the obligation to register and record changes that occur in the future.<sup>12</sup>

In Indonesia's land registration system, there are 2 (two) land registration publication systems are applied in various worlds, namely, the positive publication system and the negative publication system. Both methods have differences regarding the legal protection that will be given to the owner of land rights if the land registration is not correct.<sup>13</sup> Indonesia's own land registration publication system adopts a negative publication system where the state does not guarantee the truth of the data presented. Still, in this case, the state does not use a negative publication system purely because land registration is a legal event as a procedure tool for collecting, processing, storing, and presenting biological and juridical data to issue certificates to ensure legal certainty. The weakness of the negative publication system, among others, is that the party whose name is listed as the holder of the rights in the land book and certificate always faces the possibility of a lawsuit from other parties who feel they own the land.<sup>14</sup>

Meanwhile, according to Elza Syarif, the negative stelsel used in land registration has the aim of providing legal protection for land rights owners, because the negative stelsel adheres to the Nemo plus Juris principle, there is legal certainty in land registration because land data is known, in this system, the registration officer the land is actively researching the requested data so that a land certificate is issued for the applicant for the land certificate, but the granting of a certificate of land rights for the applicant only as the owner stated in the certificate of proof of land rights is not absolute so that the opportunity for the owner of land rights is given to prove his ownership to the general court.<sup>15</sup>

The negative publication system with a positive tendency in the land registration system carried out by BPN still causes problems, especially in the juridical field related to juridical data whose evidence is considered weak or even weak, in various land cases because the acquisition, control and ownership of objects is based on legal actions orally and unwritten and not even registered.<sup>16</sup>

<sup>7</sup>Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana, 2008, Jakarta, page. 141-169.

<sup>8</sup>Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, Bayumedia, 2013, Malang, page. 57.

<sup>9</sup>Boedi Harsono, *Hukum Agraria Indonesia*, Edisi Revisi, Djambatan, Jakarta, 2005, page. 474.

<sup>10</sup>Prama Widianugraha, *Tinjauan Normatif Pendaftaran Tanah Sistematis Lengkap Dikaitkan Pembentukan Aturan Peraturan PerundangUndangan*, Jurnal Bina Mulia Hukum, Volume 3, Nomor 2, Maret 2019, page 209

<sup>11</sup>Mira Novana Ardani, Peran Kantor Pertanahan dalam Kegiatan Pendaftaran Tanah Sistematis Lengkap, Jurnal Gema Keadilan Volume 6, Edisi 1 Juni 2019, page 54

<sup>12</sup>A.P. Parlindungan, *Pendaftaran Tanah Di Indonesia*, Bandung : Mandar Maju, 1999, page. 76-77

<sup>13</sup>J.B. Daliyo, dkk. *Hukum Agraria I*, PT Prenhallindo Jakarta, Jakarta: 2001, hal. 81 Pasal 32 ayat (2) PP 24/1997

<sup>14</sup>Article 32 paragraph (2) PP 24/1997

<sup>15</sup>Mariam Badrul Zaman dikutip oleh Elza Syarif, *Pensertifikatan Tanah Bekas Hak Eigendom*,

<sup>16</sup>Bhim Prakoso, Pendaftaran Sistematis Lengkap Sebagai Dasar Sistem Publikasi Pendaftaran Tanah, Journal of Private and Economic Law 2021, page 70

Thus, the implementation of the PTSL program is expected to provide more legal certainty for the certificates issued so that the publication system with positive tendencies can be realized. In contrast, the stages of PTSL implementation are regulated in Article 4 paragraph (4) of the 2018 ATR/KBPN Ministerial Regulation consisting of:

- a. Planning;
- b. Location determination;
- c. Preparation;
- d. Formation and determination of the PTSL adjudication committee and task force;
- e. Counselling;
- f. Physical data collection and data collection juridical;
- g. Juridical data research for proof of rights;
- h. Announcement of physical data and juridical data as well as its endorsement;
- i. Confirmation of conversion, recognition of rights and grants right;
- j. Bookkeeping rights
- k. Issuance of certificates of land rights;
- l. Documentation and submission of activity results; and
- m. Reporting

PTSL objects in Sragen Regency are all land registration objects in the territory of Indonesia, both those that already have boundaries and those whose borders will be set in activities, dealing with PTSL objects in Sragen Regency, there are all village areas in Sragen Regency.

In the implementation of PTSL at the Land Office of Sragen Regency assisted by the Village apparatus, which was then used as a juridical task force<sup>17</sup>, the juridical task force is appointed as the party who knows the history of the registered land and in assisting the PTSL administrative completeness process, which must be completed by PTSL participants, with assistance from the village administrator starting from the identity of the parties and a certificate of inheritance if the owner of the certificate has died.<sup>18</sup>

In the juridical data research stage, several villages were found re-registering land rights that previously had a certificate which then passed the deletion of the Village C List at the Sragen Regency Land Office and gave the process of matching the land parcel maps so that a new certificate was created. This can happen because the deletion of List C of villages only started around 1997. The administration of the land office is not as good as it is today where the mapping of land parcels is carried out through village maps, thus creating several hectares of land, in this case, the old certificate, which already exists but because it is not any streaking may reappear.<sup>19</sup>

With the lack of administration, the write-off has caused problems in the PTSL program, one of which is a double or overlapping certificate, one of which is the Ownership Certificate No. 146 Kaliwedi Village, on behalf of SAMIJO, which is re-registered so that a PTSL certificate appears with Ownership No. 03351 Kaliwedi Village, on behalf of SETYOWATI.<sup>20</sup> Therefore, the Land Office of Sragen Regency should be more careful in researching biological data and juridical data so that the PTSL Program in SragenRegency can guarantee legal certainty.

## 2. Completion of Multiple Certificates for Complete Systematic Land Registration Products in Sragen Regency

The certificate-based on the provisions of Article 32 paragraph (1) of PP Number 24 of 1997 is an elaboration of the provisions of Article 19 paragraph (2) letter c, Article 23 paragraph (2), Article 32 paragraph (2), and Article 38 paragraph (2), which reads that land registration produces a certificate of evidence that is valid as a vital means of proof regarding biological data and juridical data by the data contained in the letter of measurement and the book of land rights in question. The land certificate proves that the right holder has a right to a specific plot of land. Physical data includes information on the location, boundaries, and land area. Juridical data provides information regarding the legal status of the land parcel, its rights holders and the rights of other parties, as well as additional burdens that burden it. Physical data and juridical data in the land book are described in the form of a list, while the biological data in the measurement letter is presented in maps and descriptions. The Letter of Measurement shall state the condition, location, area and land in question.<sup>21</sup>

Certificate as referred to in Article 1 point 20 PP 24/1997 is a letter of proof of rights and as a solid evidence-based on article 19 paragraph 2 of the UUPA, while according to Ali Achmad Chomsah, a certificate is a proof of title consisting of a copy of the land book and a measuring document, enclosed, bound together, the form of which is determined by the State Minister for Agrarian Affairs/Head of the National Land Agency.<sup>22</sup> So that the certificate can be strong evidence as long as it cannot be proven otherwise, as long as it cannot be proven otherwise, the physical data and juridical data contained therein are accepted as correct information.

There are various forms of legally flawed certificates as follows:

1. Fake Certificate  
A certificate can be said to be fake if:<sup>23</sup>
  - a. Certificate creation data is fake or falsified.

<sup>17</sup> Article 13 Minister Regulation of ATR/KBPN Number 6 the Year 2018

<sup>18</sup> Based on an Interview with Sudarta, dated 19-10-2021 at the Land Office of Sragen Regency.

<sup>19</sup> Based on an Interview with Sudarta, dated 19-10-2021 at the Land Office of Sragen Regency.

<sup>20</sup> Based On Data from the Land Office of Sragen Regency

<sup>21</sup>Ni Luh Juliani Dani ,I Gusti Ngurah Dharma Laksana, "Fungsi Pelaksanaan Pendaftaran Tanah Sistematis Lengkap (PTSL) Di Kabupaten Tabanan Dalam Rencana Tata Ruang Terhadap Masyarakat", Artikel Jurnal Kertha Negara Vol. 9 No. 1 Tahun 2021, page. 12-23.

<sup>22</sup> Ali Achmad Chomzah, *Hukum Pertanahan Seri Hukum Pertanahan IPemberian Hak Atas Tanah Negara dan Seri Hukum Pertanahan IISertifikat Dan Permasalahannya*, Prestasi Pustaka, 2002, page. 122

<sup>23</sup> *Ibid*, hal.136

- b. The signature of the head of the district/municipality land office was falsified.
- c. The blank used to make the certificate is a fake/not a blank issued from the National Land Agency.
2. Original but Fake Certificate  
Original but Counterfeit Certificate, a certificate formally issued by the local Regency/Municipal Land Office, but the proof of ownership or other documents used as the basis for making and issuing the certificate are fake.<sup>24</sup>
3. Dual Certificate.<sup>25</sup>  
Dual Certificates are certificates that describe the same parcel of land. Thus, one plot of land is represented with 2 (two) certificates or more with different data. This kind of thing is also called "Overlapping Certificates", either overlapping the entire field or overlapping part of the land.<sup>26</sup>

There are several factors for the occurrence of a legal disability certificate, namely:

Internal factors include:<sup>27</sup>

- 1) Not implementing the Basic Agrarian Law and its implementing regulations in a consistent and responsible manner, there are still people who act for personal gain.
- 2) The lack of functioning of the supervisory apparatus provide opportunities for subordinate officers to act defiantly in the sense of not carrying out their duties and responsibilities according to their oath of office.
- 3) The inaccuracy of Land Office officials in issuing land certificates, namely the documents that are the basis for the issuance of certificates, are not scrutinized, which may not meet the requirements as determined by the applicable laws and regulations.

External factors include:

- 1) The community is still not aware of the laws and regulations on land, especially regarding making land certificates.
- 2) The land supply is not balanced with the number of applicants who need land.
- 3) The development resulted in the need for land increasing. In contrast, the supply of land was minimal so as to encourage the shift of land functions from agricultural land to non-agricultural land, resulting in soaring land prices.

In the PTSL program in Sragen Regency, it was found that there were double certificates or often called overlapping certificates, either partially or wholly overlapping certificates. The dual certificates that appeared in the PTSL program could be cancelled if there was a report from interested parties on the land rights. One example is the Ownership Certificate No. 146 Kaliwedi Village, in the name of SAMIJO, which was re-registered so that a PTSL certificate with Ownership Rights No. 03351 Kaliwedi Village, on behalf of SETYOWATI, that in the case of this certificate, turned out to be the exact location, so that happened overlapping, thus the Land Office of Sragen Regency, in conducting juridical and physical research, is less careful and thorough so that it does not apply the principle of safety,

Based on PMNA/KBPN No. 9/1999, there are 3 types of cancellation of land rights as follows:

1. Cancellation of Land Rights Due to Legal Defects Issued Due to the Application
2. Cancellation of Land Rights Due to Legal Defects Issued Without Application
3. Cancellation of Land Rights Due to Implementing Court Decision Money Has Obtained Permanent Legal Force

The certificate produced in the PTSL program is a certificate issued because of an application so that if there is a cancellation of the certificate due to a legal defect, the basis for the cancellation is the cancellation of land rights due to legal defects issued because of the application as regulated in Article 108 -Article 118 PMNA/KBPN No. .9/1999.

In this case, the Land Office of Sragen chose the settlement of the dual certificate in a familial way, namely by providing legal counselling to the parties holding the certificate regarding the status of the certificate held and the legal consequences of the certificate.

The legal counselling is carried out as the first stage in completing the dual certificates that appear by explaining to the parties the legal consequences of the certificates. However, if the parties do not want it to be resolved amicably or in a family manner, then the cancellation process follows the regulations of Articles 108 to 118 PMNA/KBPN 9/1999.

However, during the implementation of the PTSL program at the Land Office in Sragen Regency, the parties who filed complaints regarding dual certificates chose to resolve the problem by submitting one of the certificates, which was later declared cancelled by the Sragen Regency Land Office, while the revoked certificate could be in the form of a newly issued certificate. (PTSL) or certificates that have been held by the parties previously, so it is not always the PTSL certificate that is cancelled, the guideline for cancellation is the results of the PTSL certificate research and the old certification, which is then compared to which of the two certificates the juridical data and biological data are by the land book which is in the Land Office of Sragen Regency. After the research was carried out, the Sragen Regency Land Office made a statement letter on the release of land rights, which would be cancelled and declared invalid by the Sragen Regency Land Office.<sup>28</sup>

## CONCLUSION

1. The implementation of the PTSL program at the Land Office of Sragen Regency has not been able to fulfil the principle of safety as stated in Article 2 of PP 24/1997, namely that the implementation of land registration must be carried out carefully and carefully to guarantee legal certainty. The new land tenure program was started around 1997 so that the Village C Register before 1997 has not been crossedout and allows the old certificates to be re-registered through the PTSL program so that they

<sup>24</sup> *Ibid*, hal.136

<sup>25</sup> *Ibid*, hal.138

<sup>26</sup> Ali Achmad Chomzah, Op.Cit, page. 139

<sup>27</sup>Utoyo Sutopo., *Masalah Penyalahgunaan Sertipikat Dalam Masyarakat Dan Upaya Penanggulangannya*, Makalah pada Seminar Nasional Kegunaan Sertipikat Dan Permasalahannya, Yogyakarta, 1992, page. 56.

<sup>28</sup> Based on an Interview with Eva, dated 19-10-2021, at the Land office of Sragen Regency.

- can pass in juridical research and biological research, thus creating multiple or overlapping certificates.
- Dispute resolution regarding dual certificates at the Land Office of Sragen Regency is carried out in a family manner where the parties are given legal counselling regarding the legal status and consequences to the parties, regarding the cancelled certificates are certificates based on physical and juridical research that is not in accordance with the land book in the land office sragen district.

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### Constitution

- Essential Agrarian Law Number 5 the Year 1950  
Government Regulation Number 24 the Year 1997  
Minister Regulation of Agrarian and Head of National Land Agency Number 6 the Year 2018

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