

## A JURIDICAL ANALYSIS OF THE LAND REGISTRATION PUBLICATION SYSTEM IN INDONESIA ON THE EMERGENCE OF DUAL CERTIFICATES

Risha Khonza Persada  
Jadmiko Anom Husodo  
Andina Elok Puri Maharani

### ABSTRACT

*The registration publication system in Indonesia applies a negative publication system that has positive elements, which in the Basic Agrarian Law Number 24 of 1997 explains that a strong evidence tool is the issuance of land rights certificates. This system cannot be separated from weaknesses in which these weaknesses become a gap for the emergence of multiple certificates. The purpose of this study is to analyze the relationship between the land registration publication system in Indonesia and dual certificates. This research method is normative, statutory approach and case approach. Using primary legal materials, namely laws, books and journals. The results of this study are the negative publication system with positive elements only proves the party whose name is registered in the land book only, resulting in prone to certificate problems, one of which is dual certificates due to the lack of thoroughness of National Land Agency officers before issuing certificates, imperfect regulations governing land registration, and If the land registration system itself is not perfect, it is necessary to have a breakthrough in the negative land registration publication system with positive elements into a positive land registration publication system in order to minimize land problems that arise.*

**Keywords:** publication system, registration, land, dual certificates, breakthrough.

### INTRODUCTION

The government has the authority to decide the rules and is responsible for the development of a country. Population growth is getting higher every year in proportion to land needs. In addition, the land does not increase in size. It causes pressure on the land to be higher, increasing the population. Furthermore, the need for land for houses, infrastructure, and industry, has forced on agricultural lands and forests. Seeing the reality of how important and fundamental the land is Some of these transitions are one of the problems the Indonesian people face. The higher selling value of land is also a significant factor. The imbalance between population and land forces people to look for ways to control and even own it, leading to disputes, conflicts, and problems in the land sector.

Any conflicts related to land will impact all interconnected aspects of life because land means multidimensional for the people. Land problems are complex. Conflicts and land disputes have never decreased. It increased in quantity and quality day by day. Therefore, it is needed to guarantee legal certainty for land rights holders to prevent conflicts. The government issued a regulation in Law Number 5 of 1960 concerning Basic Agrarian Regulations, hereinafter referred to as the Basic Agrarian Law (UUPA), which became a *lex generalist* regulation in the agrarian or land sector. Article 19 of Paragraph 1 of the Basic Agrarian Law states that:

"To guarantee legal certainty by the Government, land registration is carried out throughout the territory of the Republic of Indonesia according to the provisions stipulated in a Government Regulation."

Land registration in a foreign language is called *capistratum* and means registration or resident or entity created by the Romans for property tax (*capotatio terrenis*). *Cadastral* refers to data about a plot of land, the value of a plot of land, and the owner of its rights for tax purposes. A *cadastre* is a proper tool to provide an overview and identification of land rights. (FinaAyu,2020:789). It refers to Article 19 of the Basic Agrarian Law of Government Regulation (PP) Number 10 of 1961, regulating land registration in Indonesia and its legal consequences. 45% of the land parcels were registered at that time, then the Government Regulation No. 10 of 1961 was pulled back and perfected by the Government Regulation Number 24 of 1997. Land registration was carried out at the National Land Agency Office, which is the institution assigned by law to overcome matters about land. Definition of Land Registration Article 1 Point 1 Law Number 24 of 1997 is a series of activities carried out by the Government continuously and regularly, including collection, processing, bookkeeping, and presentation and maintenance of physical data and juridical data, in the form of maps and a list, regarding land parcels and apartment units, including the issuance of certificates of proof of rights for land parcels that have rights and ownership rights over flat units as well as certain rights that encumber them. Land registration produces a Land Book containing juridical data, accompanied by a measuring document containing physical data, then bound together and given a green cover with an image of an eagle, called a land rights certificate. Land registration according to the UUPA, no using a positive publication system instead of using a negative system. In the system negative publications, the state does not guarantee the truth of the data presented. Arie S. Hutagalung states that the UUPA uses a mixed system, which is basically a publication system negative but given a positive characteristic.(Nur Susilowati,2020) According to national agrarian law, land rights granted to certificates classify land rights into two categories. The first category includes essential land rights, namely land rights owned or managed directly by individuals or legal entities for a long time. Moreover, they can be moved to other people and their heirs, such as Ownership Rights, Cultivation Rights, Building Use Rights, Use Rights. Meanwhile, the second category are secondary land rights, namely temporary land rights such as liens ,profit-sharing business rights, the right to ride, and the right to rent on agricultural land. There are several mainland rights in the Basic Agrarian Law, namely the right of land ownership, the right to cultivate, the right to build, and the right to use (Saharuddin Daming, 2021).

The land registration system in Indonesian uses a system that adheres to a negative publication system but has a positive element, meaning that the land certificate is not an absolute truth. It cannot be contested anymore (*indivisible title*). From this we can conclude that the land is still the property of the certificate holder unless another party can prove it in another way. This system still causes many land disputes, especially on certificates. Several disputes occurred on land certificates, namely, fake certificates, fake original certificates, and multiple certificates. However, what often happens is the discovery of Dual certificates. Overlapping certificates or a plot of land have two different owners. It is due to the different data. It is also possible because the registration map has not been unravelled, and the data is lacking. The absence of a parcel map on the registered land causes changes in land boundaries. It results in land overlapping in part and/or the entire plot of land (Perdana, 2018). Certificate disputes usually arise because the land registration system is imperfect, even far from perfect, it can also be caused by the inaccuracy of the authorities in identifying before issuing certificates.

Based on the explanation above, the authors took the title "Juridical Analysis of the Land Registration Publication System in Indonesia on the Emergence of Dual Certificates".

## RESEARCH PROBLEM

What is the relationship between the Negative Publication System with Positive elements and dual certificates?

## RESEARCH METHOD

The method used in this writing was literature, so it was called normative law writing (doctrinal). Thus, the analysis and study of secondary data were obtained from writings and theories of more expert opinions, so there was no need to develop hypotheses (Silalahi, 2012). The nature of this legal writing was prescriptive. This paper analyzed problems with legal norms that were applied. This research used *statutory*, and *case approaches*. Primary legal materials consisted of laws and secondary legal materials, such as journals and books.

## RESULT AND DISCUSSION

### The Relationship between the Positive Publication System and Dual Certificates

The negative publication system is that everything written in the land certificate is considered authentic until evidence of a situation that is otherwise (not true) is found in court. There is a principle in this negative system, namely the *nemo plus juris* principle in the transfer of land rights, to protect the actual holding of land rights from the actions of others who want to transfer their rights without the original owner's knowledge. (Prakoso, 2021), the main characteristic of this negative system is that the land registration does not claim that the names in the land book cannot be disputed if the registered name is not the actual owner's name. The authorized official has no right to check whose name the registration of rights is. Land registration officials registering rights in public registers on behalf of the applicant do not need to conduct a preliminary investigation of the applicant. It can run quickly and efficiently to register the rights' transfer in the opposing system (Surawirawan, 2016). This explanation means that a land certificate cannot be interpreted as a strong guarantee for someone as the owner of a piece of land. Supreme Court Decision of the Republic of Indonesian Number: 459/Sip/1975 dated 18 September 1975, has determined that:

"Given the negative system regarding land registers or registrations in force in Indonesia, registering a someone's name in the register does not mean that they are the absolute owner of the land, let alone that other parties can prove its invalidity" (Sri, 2007).

The weakness of this negative publication system is that a lawsuit may occur from other parties who feel they own the land. This weakness can be overcome with an *acquisitive verjaring* or *adverse possession* institution (in the Civil Code principle). However, these institutions cannot function because the land law adheres to the basis of customary law. Customary law is known as the *rechtsverwerking* institution. If someone intentionally or not abandons land for a long time, then the land is taken over by another party, who acquires it in good faith, his rights will be lost (Harvini Wulansari, 2021). There are also advantages of this system: there is protection for the actual right holder, and an examination of the history of the land before the certificate is issued.

Indonesia adheres to a negative publication system with positive elements, but the regulations in Indonesia do not provide details regarding the applicable land registration publication system. Provisions in the Basic Agrarian Law and Government Regulation No.24 of 1997 explain that land registration is a vital evidence tool, namely the issuance of land rights certificates. The certificate of land rights is only substantial evidence. It is not absolute or perfect proof, as long as the information in the certificate is considered correct, as long as there is no evidence to prove otherwise. The meaning of the negative publication system has a positive element in the provisions of Article 32 paragraph (2) Government Regulation No. 24 of 1997 that:

"In the event that a land certificate has been legally issued in the name of a person or legal entity that obtains the land in good faith and has real control over it, the other party who feels that the right to the land can no longer demand the exercise of rights 5 (five) years since the issuance of the certificate does not file an objection in writing to the certificate holder and the Head of the relevant Land Office or does not file a claim to the Court regarding land ownership or issuance of the certificate."

In fact, there were weaknesses in the land registration publication system, which referred to Law Number 5 of 1960. The weaknesses included 1) not all levels of society could register land; 2) the socio-cultural community has not fully realized the importance of land registration, as evidenced by the large number of land parcels that had not been recognized; 3) due to the error of the registrar; 4) the measurement process was still not practical, and 5) village registers still became an obstacle in the land

registration system. These weaknesses caused problems in land affairs, especially in the case of certificates. One of them was dual certificates. Dual certificates mean that one plot of land has two owners with different names due to partial or complete overlap of other people's rights. It should be noted that the dual certificates are equally legal because they were issued by the National Land Agency (BPN) according to land registration rules (Herdarezki, 2021). The emergence of this dual certificate was due to some carelessness of the landowner himself, who did not use his land optimally. When taking measurements, the applicants indicated that the location of the land and land boundaries did not match the area and the intention of the person concerned to register the certificate again.

There were also some errors from the National Land Agency due to a weak database or lack of thoroughness of Land Office officials before issuing land certificates. There was no land registration map. Legal certainty in this system means that the publication of hostile land is prone to errors due to the lack of the principle of prudence, the principle of accountability, the principle of transparency, and the principle of accuracy. Various problems with multiple certificates showed that the land registration mechanism lacks accuracy and prudence, so there was a potential for conflict related to land certificates. The principle of accuracy and thoroughness are essential to initiate a safe land registration process. Thus, land registration and publication of the registration of land rights must always accommodate these principles. Land registration needs to be carried out carefully so that the results can produce legal certainty guarantees. Meanwhile, the accountability and transparency principles ensure that the land registration mechanism complies with the applicable laws. The variety of problems with dual certificates that arise from the entire land registration process with negative publications, as is currently the case, has become one of the factors that indicate the importance of the need for breakthroughs to realize legal certainty in land registration and perhaps the need for changes to the land registration system with positive elements. Worse is the reality in world of practice, that there are several Supreme Court decisions that grant claims against land certificates that are more than 5 (five) years old. This means that the waiting period threshold of 5 (five) years as regulated in Government Regulation Number 24 of 1997 concerning Land Registration has also not been effective in locking land certificates that have exceeded the 5 (five) year period so that a lawsuit cannot be filed against it at all, although it has been regulated again in Article 64 paragraph(2) of Government Regulation Number 18 of 2021 that claims against land certificates that are more than 5 (five) years can only be carried out on certificates with administrative defects. In addition, not a few certificates were cancelled due to the multiple certificates being sued. Therefore, from these problems, the implementation of land registration must be re-conceptualized so that it has legal certainty.

In the event of negligence, per the positive publication system, the state becomes the primary administrator and the only mandatory land registration by providing solutions or compensation. Thus, legal certainty over land can be obtained by using the opportunity to sue as the last alternative so that no one else takes advantage of it.

## CONCLUSION

Indonesian adheres to a negative publication system with positive elements, but the regulations in Indonesia have not provided details regarding the applicable land registration publication system. Provisions in the Basic Agrarian Law and Government Regulation No 24 of 1997 only briefly describe land registration, including solid evidence, namely the provision of a letter of proof of landrights. Certificates of land rights is only a strong proof and is not absolute or perfect proof because the information in the certificate is considered correct as long as no evidence proves otherwise. The meaning of the negative publication system with positive elements was contained in the provisions of Article 32 Paragraph (2) Government Regulation No 24 of 1997. These weaknesses have resulted in the emergence of problems inland, especially in the case of certificates, including dual certificates. Dual certificates mean that one plot of land has two owners with different names due to partial or complete overlap of other people's rights. It is due to the lack of compatibility between regulations and the applicable land registration system. Therefore, with the interrelatedness between the weaknesses of the registration publication system as the leading cause of dual certificates, a breakthrough was needed to realize legal certainty in land registration, and perhaps a change in the land registration system with positive elements is needed. Under the positive publication system, the state becomes the primary administrator and the only mandatory land registration by providing solutions or compensation in the event of negligence.

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Risha Khonza Persada  
*Faculty of Law*  
*Sebelas Maret University (UNS), Indonesia*  
*Email: rishakhonzap@gmail.com*

Jadmiko Anom Husodo  
*Faculty of Law*  
*Sebelas Maret University (UNS), Indonesia*  
*Email: Jadmikoanom@staff.uns.ac.id*

Andina Elok Puri Maharani  
*Faculty of Law*  
*Sebelas Maret University (UNS), Indonesia*  
*Email: Andinaelok@staff.uns.ac.id*