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DOI: 10.46924/jihk.v6i1.212



The Evidentiary Strength of Land Ownership: A Comparison Between Written Documentation and Twenty Years of Continuous Physical Possession

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How to cite

Permadi, Iwan, & Kusumawati, Nita. 2024. "The Evidentiary Strength of Land Ownership: A Comparison Between Written Documentation and Twenty Years of Continuous Physical Possession." *Jurnal Ilmu Hukum Kyadiren* 6(1), 50-65. <https://doi.org/10.46924/jihk.v6i1.212>

Original Article

Abstract

This article analyzes the strength of written evidence and proof of physical possession in registering land rights in Indonesia. This normative juridical research examines laws and regulations related to land registration, particularly GR No. 24/1997 and GR No. 18/2021. The results show that while evidence of physical possession for 20 consecutive years can be the basis for land registration, written evidence tends to have stronger evidentiary power in dispute resolution. However, the Indonesian legal system has no clear hierarchy between the two. Judges have an important role in assessing the evidence presented based on the principles of evidentiary law. This research recommends increased socialization on the importance of land registration and the need for a clearer policy on the hierarchy of evidence in land dispute resolution to improve legal certainty.

Keywords: *Evidence, Land Ownership, Physical Control*

Abstrak

Artikel ini menganalisis kekuatan bukti tertulis dan bukti penguasaan fisik dalam proses pendaftaran hak atas tanah di Indonesia. Penelitian yuridis normatif ini mengkaji peraturan perundang-undangan terkait pendaftaran tanah, terutama PP No. 24/1997 dan PP No. 18/2021. Hasil penelitian menunjukkan bahwa meskipun bukti penguasaan fisik selama 20 tahun berturut-turut dapat menjadi dasar pendaftaran tanah, bukti tertulis cenderung memiliki kekuatan pembuktian yang lebih kuat dalam penyelesaian sengketa. Namun, tidak ada hirarki yang jelas antara keduanya dalam sistem hukum Indonesia. Hakim memiliki peran penting dalam menilai bukti-bukti yang diajukan berdasarkan prinsip-prinsip hukum pembuktian. Penelitian ini merekomendasikan peningkatan sosialisasi tentang pentingnya pendaftaran tanah dan perlunya kebijakan yang lebih jelas mengenai hirarki bukti dalam penyelesaian sengketa tanah untuk meningkatkan kepastian hukum.

Katakunci: *Pembuktian, Kepemilikan Tanah, Penguasaan Fisik*

1. INTRODUCTION

Agrarian law is one of the important branches related to land and its utilization. Along with the times, research in the field of agrarian law is increasingly important to ensure justice in land utilization and the prevention of emerging agrarian conflicts. There are two strong pieces of evidence to be used as proof of ownership of land rights, namely written evidence and proof of physical control for 20 consecutive years as regulated in Government Regulation No. 24 of 1997 concerning Land Registration and Regulation of the 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.

Article 24 of Government Regulation No. 24 of 1997 concerning Land Registration states that to register rights, land rights derived from the conversion of old rights are proven by evidence of the existence of such rights in the form of written evidence. It is then explained that if there are no longer complete means of proof available, then proof of rights can be carried out based on the physical control of the land parcel concerned for 20 (twenty) years or more consecutively.

Government Regulation No. 24 of 1997 is partially amended by Government Regulation (PP) No. 18 of 2021 on Management Rights, Land Rights, Flat Units, and Land Registration. Government Regulation (PP) Number 18 of 2021 is a regulation that combines various provisions (omnibus law), as well as harmonizes, synchronizes, updates, and revokes regulations that are no longer relevant by Law Number 6 of 2023 on Job Creation. Some of them are Government Regulation No. 40/1996 on Business Use Rights, Building Use Rights, and Land Use Rights, Government Regulation No. 24/1997 on Land Registration, and Government Regulation No. 103/2015 on Ownership of Residential Houses by Foreign Citizens in Indonesia. In addition, this PP also regulates the strengthening of Management Rights and updates the provisions in PP No. 8 of 1953 concerning State Land Tenure. This PP also includes new policies for granting rights to Above Ground and Underground Space.

Article 60 about the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 on the Provisions for the Implementation of Government Regulation Number 24 of 1997 on Land Registration also states that written evidence of land ownership is in the form of evidence for the registration of new rights and the registration of old rights. Article 61 of the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 states that in the event that ownership of a parcel of land cannot be proven by means of evidence as referred to in Article 60, then physical control of the parcel of land concerned for 20 (twenty) years or more consecutively by the person concerned and his predecessors as referred to in Article 24 paragraph (2) of Government Regulation Number 24 of 1997 may be used as the basis for recording the land as belonging to the person concerned.

From the background above, there are legal issues related to proof of ownership derived from old rights, namely customary and western rights, consisting of written proof and physical control for 20 consecutive years. The legal issue is about which proof is the most entitled to the land, namely whether it has written evidence or only physical control for 20 consecutive years. Both normatively have strong evidentiary power because they are regulated by legislation.

Based on the formulation problem, the objectives of this research are 1) to analyze the strength of Written Evidence and Physical Control Evidence, the main objective of this research is to analyze the legal strength between written evidence and physical control evidence of land in the context of land rights registration and proof of land ownership, 2) to identify and analyze whether there is a hierarchy or legal preference between written evidence and physical control evidence in land dispute resolution, the aim is to understand how the hierarchy of evidence affects the process and outcome of land dispute resolution, as well as the consequences for justice and efficiency in dispute resolution.

2. RESEARCH METHODOLOGY

This research is a type of normative juridical research. This research examines and interprets principles, conceptions, doctrines, and legal norms relating to management rights and the concept of land reserves. This research uses several approaches, namely a conceptual approach that analyzes and evaluates legal concepts and values in regulatory norms related to management rights and land reserves and a statutory approach that prioritizes legislation as the main reference. Regulations related to agrarian affairs are used for analysis and review.

Two types of legal sources used in this research are Primary Legal materials including the 1945 Constitution of the Republic of Indonesia Amendments, Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA), Government Regulation No. 24 of 1997 concerning Land Registration, Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration, Regulation of the 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, Presidential Decree Number 34 of 2003 concerning National Policy in the Land Sector. Then, Secondary Legal materials include relevant literature from books, scientific articles, and other related sources.

Legal materials are collected through document studies (library research). This study includes research on books, literature, notes, and reports relevant to the research theme. Meanwhile, legal materials are analyzed by classifying written legal materials to facilitate analysis and construction, interpreting legal materials using qualitative descriptive methods, grouping data into certain parts, and processing them into relevant information.

3. RESEARCH RESULTS AND DISCUSSION

3.1 The Evidentiary Power Between Written Evidence and Evidence of Physical Control of Land in the Process of Registration of Land Rights for Proving Old Rights

3.1.1. Land Registration and Legal Protection of Land Rights Holders

Land registration is a series of activities by the government on an ongoing basis to record and maintain physical and juridical data regarding land parcels. This definition is stated in Article 1 point 1 of Government Regulation Number 24 of 1997. Land registration includes data collection, processing, bookkeeping, presentation, and physical and juridical data maintenance.¹ The data is presented as maps and land registration registers covering land parcels and apartment units. This process also involves the issuance of certificates as proof of land rights.

The main objectives of land registration are to ensure legal certainty and land rights, make it easier for right holders to prove their ownership, and provide information for interested parties. Parties interested in land include landowners, neighboring landowners, government, developers, land users (tenants, users), local communities, financial institutions, and land buyers.

Legal certainty in land registration includes the legal status of the right holder (the subject of the right), the object of the land right, along with its location, boundaries, area, and the right's legal aspects. In addition, legal certainty is realized through valid proof of ownership, clear and orderly records, legal protection for owners, ownership transparency, and compliance with applicable laws. The object of land registration, according to Article 9 of PP No. 24/1997, includes land parcels with ownership rights, business use rights, building use rights, use rights, management rights land, *waqf* land, ownership rights to apartment units, and state land (only recorded without issuing certificates).² Then, the land registration system is divided into two systems: registration of deeds and registration of titles.

Indonesia applies a rights registration system, where what is registered is the right created and its changes, not the deed.³ This system is characterized by the existence of a Land Book and the issuance of certificates as proof of rights. Land registration is out in two ways:⁴ 1) systematic land registration, which is conducted *en masse* at the government's initiative for all unregistered land registration objects in an area; 2) Sporadic land

¹ Pemerintah Republik Indonesia, "Peraturan Pemerintah No. 24 Tahun 1997 Tentang Pendaftaran Tanah" (1997).

² Ni Ketut Suartining and Benny Djaja, "Land Rights in the Land Law System in Indonesia According to the Basic Agrarian Law Number 5 of 1960," *Journal of Social Research* 2, no. 6 (2023): 1775–85, <https://doi.org/10.55324/josr.v2i6.903>.

³ Urip Santoso, *Pendaftaran Dan Peralihan Hak Atas Tanah* (Jakarta: Prenada Media Group, 2019), <https://prenadamedia.com/product/pendaftaran-dan-peralihan-hak-atas-tanah/>.

⁴ Reda Manthovani and Istiqomah Istiqomah, "Pendaftaran Tanah Di Indonesia," *Jurnal Magister Ilmu Hukum: Hukum Dan Kesejahteraan* 2, no. 2 (2017): 23–28, <http://dx.doi.org/10.36722/jmih.v2i2.744>.

registration, conducted at the request of individual landowners or in bulk for one or several land registration objects.

Land problems in society include several types of ownership, 1) Individual customary land owned and managed by individuals or families for generations. 2) Customary land: collective heritage of a group or community governed by customary law. 3) State land: owned by the state and can be managed for the public interest or converted to customary rights.⁵ This diversity of land status creates challenges in registering and protecting land rights.

Legal certainty in the land context refers to the consistent application of the law, which allows the community to guarantee that the law is obeyed. This is closely related to positive legal instruments and the state's role in actualizing them. Determining and granting land rights aims to guarantee legal certainty to the right holders. This is done through law-based arrangements that cover all aspects of land tenure and use and the resolution of land issues. The goal is to manage and utilize the land for public welfare.

The Basic Agrarian Law aims to provide legal security for land rights for the entire community. Therefore, the government is required to implement *rechtskadaster* land registration throughout Indonesia. Land registration is an important process in ensuring legal certainty over land ownership. This process involves various activities carried out systematically and continuously by the government. The aim is to create an accurate and reliable recording system regarding the legal status, boundaries, and ownership of land.

The government can ensure that each plot has a clear legal status through land registration. This is important to avoid ownership conflicts and guarantee the rights of landowners. In addition, land registration also facilitates safer and more efficient property transactions, as information on land status is openly available. The land registration process also helps in spatial planning and development. With accurate land ownership and use data, the government can make more targeted policies regarding land utilization and regional development.

However, the implementation of land registration still faces various challenges. The diversity of land status, especially customary and communal land, often creates complexities in the registration process. A sensitive approach to customary law and local practices is required to resolve this issue. In addition, many communities still do not understand the importance of land registration. Intensive education and socialization are needed to increase public awareness of the benefits of land registration. Going forward, the development of a more modern and integrated land registration system, for example, through the digitization of land data, can improve the efficiency and accuracy of the registration process. This will further strengthen the guarantee of legal certainty over land ownership in Indonesia.

3.1.2. Legal Precedents on Religious Freedom The Development of Rights-Based Arrangements

⁵ Liana P Nugroho and Gunawan Djajaputra, "Kekuatan Pembuktian Sertifikat Hak Pemakaian Tempat Usaha (SHPTU) Sebagai Jaminan Utang (Contoh Kasus SHPTU Pasar Tanah Abang Blok B Jakarta)," *Syntax Literate: Jurnal Ilmiah Indonesia* 6, no. 7 (2021): 3229–44, <https://doi.org/10.36418/syntax-literate.v6i7.3396>.

The 1960s-era right bases were cards of eigendomrechts, opstalrechts, erfpachrechts for conversion of land rights for Europeans and foreigners and surat girik, petok C/D, letter C/D, pipil, kekitir, verponding Indonesia, agrarische eigendom were the right bases for conversion of land rights for Bumiputera.⁶ The arrangement changed in 1980, with the promulgation of Presidential Decree No. 32 of 1979, that letters/cards of eigendomrechts, opstalrechts, erfpachrechts are no longer the basis of rights, as well as the implementation of physical possession as the basis for applying for rights to state land ex-western rights and free state land (freistaatdomein), but the Government still recognizes surat girik, petok C/D, letter C/D, pipil, kekitir, verponding Indonesia, agrarische eigendom as the basis of rights for the conversion of customary land.

The arrangement changed in 2021, after the issuance of PP No. 18 of 2021; the basis of rights for state land is physical control - without distinguishing ex-western state land or free state land - using proof of a statement letter. The same declaration letter is also applied to customary lands with proof of girik, petok C/D, Letter C/D, pipil, kekitir, verponding Indonesia, agrarische eigendom which will be effective in 2026 or 5 years after the enactment of PP No. 18/2021. Prior to the enactment of Permen ATR/KBPN No. 12/2017, a certificate from the Village Head or Lurah was often used as the basis for customary land rights. This certificate was used to apply for conversion and registration of customary land rights and as proof of land ownership that did not yet have a certificate.⁷

Article 23 and Article 24 of Government Regulation No. 24/1997 stipulate that land rights certificates must be issued based on proof of ownership, divided into two categories: proof of new rights and proof of old rights. Proof of new rights is based on documents such as government stipulations, original PPAT deeds, stipulations granting HPL, deeds of pledge of waqf, deeds of separation, and deeds granting mortgage rights. Meanwhile, proof of old rights is based on written documents related to the rights of the conversion object. If written documents are unavailable, the proof is done through physical possession strengthened by testimony.

Land title certificates that evidence a person's ownership of land require a valid base document and are by applicable land law provisions. Therefore, if a person does not have a basic document in accordance with national land law regulations, they cannot apply for a land title certificate. Alas, hak is the evidence or document that provides the legal basis or foundation for a claim or right to land. It provides the evidence necessary to verify or establish ownership or related rights to land. In other words, it is a document that confirms or establishes the legal basis of a land right.

Proof of the basis of rights through letters, which are used in the management and granting of rights for the first time (originaire), can be in the form of documents such as girik, petok, letter C / D, pipil, kekitir, eigendomrechts, opstalrechts, erfpachtrechts, acte van eigendom, acte van agrarische eigendom, plot card, compensation letter, appointment letter, over cultivation letter, occupancy permit, occupant's permit, cultivation permit, and land ownership certificate. Meanwhile, proof of the basis of rights through letters for certified land includes deeds of sale and purchase, deeds of grants, deeds of inheritance

⁶ Gunanegara Gunanegara, "Kekuatan Hukum Surat Pernyataan Penguasaan Fisik Sebagai Alas Hak Pengurusan Hak Atas Tanah," *Law Review* 21, no. 3 (2022): 341–62, <http://dx.doi.org/10.19166/lr.v0i3.4864>.

⁷ Abdul Hamid Usman, "Perlindungan Hukum Hak Milik Atas Tanah Adat Setelah Berlakunya Undang-Undang Pokok Agraria," *Jurnal Kepastian Hukum Dan Keadilan* 1, no. 2 (2020): 60–76, <https://doi.org/10.32502/khk.v1i2.2593>.

division, deeds of inbrenng, deeds of pledge of waqf, minutes of an auction, court decisions with permanent legal force, and/or certificates.⁸

Proof of title by testimony is when a person uses testimony or testimony from witnesses to verify or prove the existence or validity of a land title. In some legal systems, however, the provision that the landowner has controlled the land for 20 consecutive years in good faith and no other disputes with other parties is proven by the presence of witnesses who can be trusted.

3.1.3. Settlement of Evidentiary Disputes Between Written Evidence and Evidence of Physical Control over Land in the Process of Registration of Land Rights for Proving Old Rights

Several problems often arise during the land registration process. The main issue is how much the public can trust the accuracy of the physical and legal data presented how far the law can protect the physical and legal data presented. In Government Regulation No. 24 of 1997 on Land Registration, Article 24 paragraph (1) states that to register rights, land rights derived from the conversion of old rights must be proven by written evidence. This evidence can be in the form of written documents or information deemed sufficient by the Adjudication Committee in systematic land registration or by the Head of the Land Office in sporadic land registration, to register the right, the right holder, and the rights of other parties encumbering it.

Furthermore, paragraph (2) states that if the evidence referred to in paragraph (1) is not available or is no longer complete, proof of rights can be carried out based on physical control of the land parcel concerned for 20 years or more consecutively by the applicant for registration and his predecessors. Problems often occur in Indonesian society for land not registered for the first time. Because land transactions use old documents such as old tax documents such as Verponding Indonesia, girik, petuk padjak, rather than using a valid certificate.

Land ownership documents include evidence showing the right holder when the Basic Agrarian Law (UUPA) came into force. If the right subsequently changes hands, then evidence of the transfer of rights must be available until it is received by the right holder when the accounting is done. This written evidence is described in Government Regulation No. 24/1997 and can take the form of the following documents:

- a) *Grosse deeds of eigendom* rights issued under the *Overschrijvings Ordonnantie* (S.1834-27), noting that the eigendom rights have been converted into property rights;
- b) *Grosse deeds of eigendom* rights issued under the *Overschrijvings Ordonnantie* (S.1834-27) from the enactment of the UUPA until the date of land registration by Government Regulation No. 10/1961 in the relevant area;
- c) A certificate of title issued under the relevant Swapraja Regulation;
- d) A certificate of ownership issued under Minister of Agrarian Affairs Regulation No. 9/1959;

⁸ Gunanegara, "Kekuatan Hukum Surat Pernyataan Penguasaan Fisik Sebagai Alas Hak Pengurusan Hak Atas Tanah."

- e) A decree granting a property right from the competent authority, either before or after the enactment of the LoGA, which does not include an obligation to register the right, but all the obligations mentioned have been fulfilled;
- f) Deed of transfer of rights made under the hand with testimony by the Head of Adat / Village Head / Sub-district before this regulation came into force;
- g) Deed of transfer of land rights made by a PPAT for land that has not been recorded;
- h) Deed of pledge of waqf or letter of pledge of waqf made before or after the enactment of Government Regulation No. 28 of 1977;
- i) Minutes of auction made by the authorized auction official for land that has not been recorded;
- j) Letter of appointment or purchase of land plots to replace land taken by the government or local government;
- k) Land tax levies or Landrente, girik, pipil, kekitir, and Verponding Indonesia before the enactment of Government Regulation No. 10/1961;
- l) Land history certificate that the Land and Building Tax Office has made;
- m) Other forms of written evidence by whatever name as referred to in Articles II, VI, and VII of the Basic Agrarian Law Conversion Provisions.⁹

The primary factors for the lack of widespread land registration are the inadequate knowledge of citizens and their difficulties in completing the first land registration process after the transition from customary land rights to land rights recognized by the Basic Agrarian Law. This situation demonstrates the government's failure to communicate and implement the prevailing legal regime. Many people still hold traditional land ownership principles that differ from the Basic Agrarian Law definition of land ownership. Most Indonesians who still retain evidence of land rights from the previous era often wrongly assume they have full ownership of the land. At the same time, it has not been officially registered as theirs. Therefore, this land registration process is necessary to verify legal ownership.¹⁰

A declaration of physical land tenure in Indonesia is vital in enforcing agrarian law. It serves to strengthen evidence of individuals' land ownership. This proof of ownership is essential for establishing the legal owner of the land based on available information. Agrarian law in Indonesia recognizes the importance of documents showing land rights as factual evidence of land ownership.

To strengthen the legal basis of ownership, landowners must register their property. In accordance with Article 26 of Government Regulation No. 24/1997 on Land Registration, a certificate of physical possession can be accepted as substitute evidence if no other juridical evidence is available. This evidence includes written documents or information whose veracity has been verified by the Adjudication Committee for

⁹ Pemerintah Republik Indonesia, Peraturan Pemerintah No. 24 Tahun 1997 Tentang Pendaftaran Tanah.

¹⁰ Meta Nadia Winata, "Analisis Terhadap Tanda Bukti Hak Lama Sebagai Petunjuk Kepemilikan Hak Atas Tanah Menurut Peraturan Pemerintah Nomor 18 Tahun 2021," *Indonesian Notary* 3 (2021): 44, <https://scholarhub.ui.ac.id/notary/vol3/iss3/44>.

systematic land registration or by the Head of the Land Office for sporadic land registration. According to paragraph (1) of Article 26 of the Land Registration Regulations, existing written documents are sufficient to register title, ownership and other related rights.

In resolving land disputes between title based on written evidence and physical possession, written evidence is more likely to prevail when viewed from the order in the governing regulations as it mentions physical possession as an alternative. While physical possession of land can be an important factor, in most cases, courts tend to give stronger weight to written evidence by the applicable rules and regulations.

In connection with proving rights for juridical data research, evidence regarding ownership or control of land is collected. This evidence can be written or unwritten, such as witness statements and testimonies of the parties concerned. The evidence is submitted by the land rights holder, his/her attorney, or other interested parties to the Adjudication Committee.

Therefore, proving ownership of land rights is a process that the owner can use to substantiate ownership claims, strengthen ownership status, refute ownership claims, or to demonstrate ownership claims over land in the context of specific events or legal actions. In the process of proof in court, to support a right, parties can request that the opposing party submit documents related to the case being heard to the judge.

The judge will carefully assess by considering other evidence, such as witness testimony and other evidence, by the principles of evidentiary law. In resolving disputes, judges will look for other evidence that is the basis or basis for the issuance of land certificates by the provisions of evidence in civil procedural law. All information contained in the proof of rights has legal force that must be accepted by the judge in court as valid information, as long as there is no other evidence that shows different facts.¹¹

3.2 The Hierarchy of the Indonesian Land Law System Between Written Evidence and Physical Tenure Evidence in the Context of Land Dispute Resolution

The process of drafting the Basic Agrarian Law, known as UUPA (Law No. 5/1960), was long. This is because, before the UUPA was declared, the Indonesian people did not fully control sovereignty over land. After all, many lands were still colonial legacies and still used the colonial system. After the enactment of the Basic Agrarian Law Number 5 of 1960, Indonesia's land tenure and management system underwent significant changes. Land use is now more directed towards achieving the prosperity and happiness of the Indonesian people. Land is no longer the property of just a few people, but the common property of all Indonesians. Land must have a social function for all Indonesians, meaning land tenure is more concerned with the common good than private interests. Thus, the unification of

¹¹ Mualifah Mualifah, Muhammad Jailani, and Lewis Grindulu, "Kekuatan Hukum Surat Pemilikan Sementara Sebagai Alat Bukti Dalam Pemberian/Penyerahan Hak Atas Tanah," *Jurnal Risalah Kenotariatan* 3, no. 1 (2022): 1–13, <https://doi.org/10.29303/risalahkenotariatan.v3i1.63>.

land law in Indonesia is truly realized with the enactment of the Basic Agrarian Law and its implementation, as well as other related regulations.¹²

3.2.1. Land Tenure Rights

Land tenure rights are a legal relationship relating to the physical control of an object utilized for private purposes. The term right to control includes the function of physical control over the object controlled.¹³ One of the main principles in tenure rights is the ability to defend these rights from parties who try to interfere with them.¹⁴ In the National Land Law (Agrarian Law), there are several types of tenure rights over land, which are hierarchically as follows:

1) Rights of the Indonesian Nation

Hak Bangsa is a term land law scholars use to refer to legal institutions and concrete legal relationships with Indonesia's earth, water, and airspace, including the natural resources contained therein, as referred to in Article 1, paragraphs 2 and 3 of the Basic Agrarian Law.

2) Right of Control of the State

The Right of Control of the State is regulated in the provisions of the Basic Agrarian Law, which states that Based on Article 33 paragraph (3) of the Constitution and the matters referred to in Article 1 of the UUPA, the earth, water, airspace, including the natural resources contained therein shall be controlled by the state as the organization of the power of the entire people. The meaning of state control referred to in Article 1 is:

“1) The State is authorized to regulate and coordinate the allocation, use, supply, and utilization of the earth, water, and space. 2) Determine and regulate the legal relationships that exist between people and the earth, water and space. 3) Determine and regulate the legal relationships that exist between people and legal acts relating to the earth, water and space.”

3) Customary Rights of Indigenous Peoples

Customary Rights is a term legal scholars use to refer to legal institutions and concrete legal relationships between customary law communities and their land and territory, called ulayat land. In the language of customary law, this land is known as Customary land. In Dutch-language customary law literature, following Van Vollenhoven's naming, this institution is called *beschikingsrecht*. It consists of two elements: one falls under the purview of civil law, and the other is a public law component that deals with the authority's responsibility to supervise and direct the common land use.¹⁵ This element of duty authority falls under the

¹² Indah Sari, “Hak-Hak Atas Tanah Dalam Sistem Hukum Pertanahan Di Indonesia Menurut Undang-Undang Pokok Agraria (UUPA),” *Jurnal Mitra Manajemen* 9, no. 1 (2017): 15–33, <https://doi.org/10.35968/jmm.v9i1.492>.

¹³ Retno Sariwati and Ferry Anggriawan, “Implementasi Peningkatan Hak Atas Tanah Dari Hak Guna Bangunan Menjadi Hak Milik Untuk Tanah Perumahan,” *Bhirawa Law Journal* 3, no. 1 (2022): 33–41, <https://doi.org/10.26905/blj.v3i1.7996>.

¹⁴ Irawan Soerodjo, *Hukum Pertanahan Hak Pengelolaan Atas Tanah: Eksistensi, Pengaturan Dan Praktik*, ed. Husni Thamrin (Jakarta: Laksbang Mediatama, 2014).

¹⁵ Fitra Alvian and Dian Aries Mujiburohman, “Implementasi Reforma Agraria Pada Era Pemerintahan Presiden Joko Widodo,” *Tunas Agraria* 5, no. 2 (2022): 111–126, <https://doi.org/10.31292/jta.v5i2.176>.

purview of public law, the exercise of which is left to the Traditional leader either alone or in conjunction with the tradition elders of the law community concerned.

Individual rights to land in the civil aspect consist of a) Land rights as individual rights, all of which originate from the right of the nation, as mentioned in Article 16 of the UUPA and Article 53 of the UUPA; 2) Waqf, which is a right of ownership that has been donated as stipulated in Article 49 of the UUPA; 3) Security rights over a land called mortgage right in Article 25 of the UUPA, Article 33 of the UUPA, Article 39 of the UUPA, and Article 51 of the UUPA. Based on these various land tenure rights, Article 16 of the UUPA mentions land rights that individuals, namely can own: Ownership Rights, Cultivation Rights, Building Use Rights, Use Rights, Rental Rights, Open Land Rights, Rights to Collect Forest Products, Other rights that will be stipulated by law as well as temporary rights as mentioned in Article 53 UUPA.

3.2.2. Conversion of Land Rights after the Enactment of the UUPA

Before the enactment of Law No. 5/1960 on the Basic Regulation of Agrarian Principles, the agrarian law system in Indonesia experienced dualism. On the one hand, there were rules derived from Customary Agrarian Law, while on the other hand, there was Agrarian Law based on Western Civil Law. This led to lands with Western rights and those with Indonesian Customary rights. However, since the enactment of Law No. 5/1960 on September 24, 1960, land rights are regulated in Article 16 of the law. These include primary land rights such as Ownership Rights, Business Use Rights, Building Use Rights, and Use Rights.¹⁶

The main objectives of Law No. 5/1960 on Basic Agrarian Principles, namely to ensure legal certainty regarding land law and to ensure legal certainty regarding land rights, are closely related to the conversion of land rights. These objectives include the creation of prosperity, happiness, and justice for the nation and its people, as well as the state and its citizens.

Traditional property rights, expressed in the Civil Code and governed by customary law, have been converted by the legal principles outlined in Part II of the Basic Agrarian Law. Articles 1 to 8 of this law describe the conversion procedure. Generally, there are two categories of land rights conversion:

- a) Conversion of rights relating to western land, including *eigendom*, postal, *erfpacht*, *gebruik*, and *bruikleen* rights.
- b) Conversion of rights relating to Indonesian land, including permanent *erfpacht* rights, *agrarische eigendom* rights, and gogolan rights. Converted land rights include:
 - *Hanggaduh* rights. Hanggaduh is the right to use land owned by the king. In the Special Region of Yogyakarta, all land belongs to the king, while the people only have the right to use it (manggaduh). Hanggaduh Rights can be converted into use rights.
 - *Grant* rights. Grant is a land right granted by the king to a foreigner. Grant rights are also called geran datuk, geran sultan or geran raja. There are three types of

¹⁶ Vanessa Virgonia et al., "Hak Menguasai Dari Desa Atas Tanah, Hak-Hak Individual Atas Tanah, Konversi Hak Atas Tanah Swapraja," *Jurnal Hukum Lex Generalis* 1, no. 6 (2020): 66–77, <https://doi.org/10.56370/jhlg.v1i6.256>.

grant rights: a. Sultan's Grant, which is a property right to manage land granted by the sultan to the people of the swapraja. This right can be converted into a hak milik, hak guna usaha, or hak guna bangunan according to the subject of the right and its purpose. b. Grant *controleur*, A right granted by the sultan to non-kawula swapraja. This right is converted into use rights. c. Grant deli maatschappy, A right granted by the sultan to a deli maatschappy which is authorized to distribute parts of its land to other parties. Although no provisions govern the conversion of this right, this right can be converted into use rights because it is similar to the controleur grant.¹⁷

- c) Right of concession and lease for large plantation companies. The right of concession for large plantation companies is the right to manage swapraja land, while the right of lease for large companies is the right to lease state land, including former swapraja land, used for plantations of 25 hectares or more. These rights can be converted into Cultivation Rights.

3.2.3. *Land Ownership in Indonesia*

Land ownership under Indonesian agrarian law can be defined through two concepts, namely physical and juridical. Land ownership includes two aspects, namely private and public aspects. In the concept of physical ownership, this indicates that the legal subject directly controls the land. Meanwhile, in juridical control, land is controlled by a legal subject based on legal provisions regulated by law. In some cases, physical and juridical control over land may be held by different parties. Sometimes, written documents and records of transactions over land are missing or incomplete. Due to this lack of evidence makes establishing the right holder with juridical land ownership rights difficult. Therefore, proof of physical possession becomes the next criterion in assessing who is entitled to the land.

In the context of proving rights, the Government Regulation on Land Registration states that if written evidence is not available, proving rights can be done based on the fact of physical possession of the relevant land for 20 (twenty) years or more continuously by the registration applicant and its predecessors. In addition, this evidence of physical possession for twenty or more consecutive years must also fulfill the two conditions listed in Article 26 paragraph (2) of the PP on Land Registration. Proof of physical possession is an alternative that can be used if complete proof of juridical land ownership is not available.

The Indonesian legal system does not regulate the hierarchy between written evidence and proof of physical possession in resolving land disputes. However, when examining the wording of Article 24 of Government Regulation No. 24 of 1997, written evidence is prioritized as juridical evidence of greater land rights. However, in the event of a dispute regarding these two evidences, the panel of judges has the right to give an assessment in the trial by examining all the evidence that is postulated.

The State's refusal to recognize some customary land holdings remains a significant problem, which is one of the main causes of high levels of agrarian conflict in Indonesia. The rights of indigenous peoples to manage and control natural resources, especially customary land, continue to face obstacles in implementation. Natural resources, especially

¹⁷ Boedi Harsono, *Hukum Agraria Indonesia : Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi Dan Pelaksanaannya* (Jakarta: Djambatan, 2003).

customary land rights, continue to face challenges. The issue of how the State (local government) recognizes their rights to customary land relating to old rights.

Safrin Salam's research results discuss the customary land conflict between the *Lapandewa Kaindea* indigenous community and the South Buton Regency Government. This conflict can be resolved properly if the government recognizes the existence of indigenous peoples and their customary land rights. The conflict began when the South Buton government requested land from the *Lapandewa Kaindea* indigenous community to build a junior high school. The indigenous community agreed, on the condition that the customary land was only used temporarily and the location of its use had been determined. However, the junior high school building was eventually built on customary land different from the agreement. The situation was further complicated when the government issued a right-to-use certificate in the name of the South Buton Regional Government without the consent of the indigenous community, with number 0003 dated June 21, 2019. As a result, the *Lapandewa Kaindea* community challenged this action in court. During the evidentiary process in court, it was revealed that the written evidence submitted by the Indigenous community did not fully fulfill the elements of the unlawful act they claimed, so the case was declared inadmissible (N.O).¹⁸ According to the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 18 of 2019, no recording of customary land controlled by the *Lapandewa Kaindea* Customary Law Community has been recorded in the land book. Therefore, this Customary Law Community needs to introduce other evidence showing ownership of customary land in court, including evidence of their physical control of the land.

Furthermore, Article 24 paragraph (2) of Government Regulation No. 24/1997 sets out the legal basis for validating customary land ownership that a certificate has not supported. According to this article, physical possession of land for 20 consecutive years and done in good faith is a valid proof of ownership. In this context, "good faith" means that the land is controlled without harming other parties. In factual legal terms, the legal subject controlling the land manages and utilizes it as a source of their daily livelihood in an uninterrupted, sustainable manner.

The physical land tenure letter can serve as proof of land ownership. Indigenous peoples who experience difficulties with recognition and protection as stipulated in PerKBPN No. 10/2016 can apply for a physical land tenure letter by Article 24 paragraph (2) of PP No. 24/1997 on land registration. The regulation states that a physical tenure statement letter can be used as alternative evidence if there is no juridical evidence. Recognition and protection of the rights of indigenous peoples in the form of collective recognition is the government's responsibility to guarantee the rights of indigenous people as Indonesian citizens.¹⁹ Collective recognition of the existence of indigenous peoples is an important aspect of the development of indigenous peoples' recognition at the international level.

¹⁸ Safrin Salam, "Penguasaan Fisik Tanah Sebagai Alat Bukti Kepemilikan Tanah Ulayat Di Pengadilan," *Crepido: Jurnal Mengenai Dasar Dasar Pemikiran Hukum, Filsafat Dan Ilmu Hukum* 5, no. 1 (2023): 1–14, <https://doi.org/10.14710/crepido.5.1.1-14>.

¹⁹ Rizki Natalina Silalahi, Isniani Isniani, and Dayat Limbong, "Tinjauan Yuridis Terhadap Proses Pemberian Ganti Kerugian Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum Dalam Pembangunan Pelabuhan Terminal Multipurpose Kualatanjung Di Kabupaten Batubara," *Journal of Education, Humaniora and Social Sciences* 5, no. 2 (2022): 1576–83, <https://doi.org/10.34007/jehss.v5i2.1412>.

CONCLUSION

The land registration process is a series of activities by the government to obtain legal certainty and land rights. To have a strong title to land, land rights holders must register their land by applicable regulations. Government Regulation 24/1997 stipulates that a statement of physical possession can serve as alternative evidence without other juridical means of proof. Although physical possession can be an important factor in the settlement of land disputes, the strength is more likely to be possessed by written evidence by applicable rules and regulations. In the process of proving a court case, the parties have the opportunity to request that the opposing party submit documents related to the case being heard, and the judge will carefully assess them based on legal principles of proof and look for other evidence on which to base the issuance of a land certificate by legal provisions. Although in the Indonesian legal system, there is no clear hierarchy between written evidence and evidence of physical possession in the settlement of land disputes, under Article 24 of Government Regulation No. 24 of 1997, written evidence tends to take precedence as juridical evidence of greater entitlement to land rights. The advice that can be given is that there needs to be increased public awareness regarding the importance of land registration by applicable regulations. The government needs to conduct broader and more intensive socialization regarding the land registration process and its benefits for obtaining legal certainty and land rights. Then, the government needs to form a clearer policy regarding the hierarchy between written evidence and proof of physical possession in resolving land disputes. This will help minimize ambiguity and increase legal certainty for all parties involved in land disputes.

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