

Jurnal Notariil

Jurnal Notariil, Vol. 7, No. 2, November 2022, 76-83

P ISSN 2540 - 797X

Available Online at <https://ejournal.warmadewa.ac.id/index.php/notariil>

E ISSN 2615 - 1545

JURIDICAL PROBLEMS OF ACQUIRING PROPRIETARY RIGHTS TO STATE LAND THROUGH FULL SYSTEMATIC LAND REGISTRATION (PTSL)

Ni Made Jaya Senastri*, Nengah Renaya and Arisya Septyani Virgin
Postgraduate Masters of Notary, Universitas Warmadewa, Indonesia
Email: *nimadejayasenastri@gmail.com, arisyasv@yahoo.co.id

How To Cite:

Senastri, N. M. J., Renaya, N., & Virgin, A. S. (2022). Juridical Problems of Acquiring Proprietary Rights to State Land Through Full Systematic Land Registration (PTSL). *Jurnal Notariil*, 7 (2), 76-83, Doi: <https://doi.org/10.22225/jn.7.2.2022.76-83>

Abstract

This study aims to examine the weaknesses of obtaining property rights on state land and the legal consequences of the issuance of property rights on state land through a legally flawed Complete Systematic Land Registration (PTSL). The method used is a normative legal writing method, using a statutory approach, a conceptual approach, and a historical approach. As an analytical tool for the legal issues studied, this study uses the theory of legal certainty, the theory of legal protection and the theory of legal justice. Based on the results of the analysis, it can be found that there is an inconsistency of norms between the Minister of ATR/BPN Number 6 of 2018 and Government Regulation Number 24 of 1997, namely Article 33, Article 22 paragraph (2), Article 24 paragraph (2) of the Minister of ATR/BPN Regulation No. 6 of 2018. The existence of the inconsistency of these norms creates legal weaknesses and uncertainty in the community regarding the suspension of BPHTB and PPh debts, a statement of ownership of rights in good faith, the principle of publicity for the announcement of physical data and juridical data, the application of the principle of contradictory delimitation in determining the boundaries of land parcels through Complete Systematic Land Registration (PTSL). The result or output in the form of a certificate of ownership that is issued has a legal defect. The legal consequences of the issuance of a certificate of ownership of state land through a Complete Systematic Land Registration (PTSL) which is legally flawed, namely cancellation due to a defect in administrative law and cancellation by implementing a court decision that has permanent legal force.

Keywords: complete systematic land registration (PTSL); land registration; state land

1. INTRODUCTION

The welfare of the people is the goal of administering the government of the Unitary State of the Republic of Indonesia. The purpose of the administration the government has been stated in the preamble to the fourth paragraph of the 1945 Constitution of the Republic of Indonesia (UUD 1945), further elaborated on Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (hereinafter referred to as UUPA). Based on Article 19 paragraph (1) of the UUPA, it states: 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. The provisions governing land registration are further regulated in Government Regulation Number 24 of 1997 concerning Land Registration (hereinafter referred to as PP Number 24 of 1997).

In order to realize the goal of all certified land by 2025, the government through the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency implemented a new program on land registration called Complete Systematic Land Registration (PTSL) (Paramitha, Suwitra, & Puspadma, 2020). Complete Systematic Land Registration (PTSL) is regulated in the 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 (hereinafter referred to as Permen ATR/BPN Number 6 of 2018).

In land registration activities, according to PP Number 24/Year 1997 and Permen ATR/BPN Number 6/2018, one of the requirements that must be met for land registration for the first time is physical data collection and juridical data collection. The existence of physical data and juridical data is the most important requirement in land registration which is used to prove the truth of ownership of rights to a plot of land and becomes the basic for issuing certificates as legal evidence of a parcel of land rights (Lubis & Lubis, 2008:81).

Based on Article 24 paragraph (2) PP Number 24/Year 1997 states:

In the event that there are no or not complete evidence tools as referred to in paragraph (1), proof of rights can be carried out based on the fact of physical possession of the land parcel in question for 20 (twenty) years or more in a row by the registration applicant and its predecessors.

In the event that Article 22 paragraph (2) of the Ministerial Regulation of ATR/BPN Number 6 of 2018 states: In the event that the evidence of community land ownership is incomplete or non-existent, it can be completed and proven by a written statement regarding ownership and/or physical control of the field. land in good faith by the person concerned.

From the collection of physical data and juridical data, an announcement will be made which is the implementation of the principle of publicity in proving ownership of land rights. The announcement of physical data and juridical data in the implementation of land through the Complete Systematic Land Registration (PTSL) has different arrangements between the Minister of ATR/BPN Number 6 of 2018 and Government Regulation Number 24 of 1997. In Article 26 paragraph (1) of Government Regulation Number 24 of 1997 state:

The list as referred to in Article 25 paragraph (2) along with a map of the land parcel or parcels concerned as a result of the measurement as referred to in Article 20 paragraph (1) shall be announced within 30 (thirty) days in systematic land registration or 60 (sixty) days in sporadic land registration to provide an opportunity for interested parties to file objections.

In Article 24 paragraph (2) Permen ATR/BPN Number 6 of 2018 states:

To fulfill the publicity principle in proving land ownership, juridical data and physical data on land parcels and maps of land parcels are announced using the Physical Data and Juridical Data Announcement form for 14 (fourteen) calendar days at the PTSL Adjudication Committee Office and the Village Head Office/ Ward.

Based on the regulation of land registration through the Complete Systematic Land Registration (PTSL), there is an inconsistency of statutory norms between Permen ATR/BPN Number 6 of 2018 and Government Regulation Number 24 of 1997, namely Article 22 paragraph (2), Article 24 paragraph (2), Article 33 Permen ATR/BPN Number 6 of 2018. The existence of inconsistencies in these norms can certainly cause legal uncertainty in the community regarding land registration through the Complete Systematic Land Registration (PTSL), the results or outputs of which are issued property rights certificates have legal problems.

There are some previous related studies that conducted the similar study with this present study. Tanri et al. (2020) conducted a similar study that examined 'Legal Certainty of Land Rights Through Complete Systematic Land Registration' that showed the results that government policies in accelerating land registration through PTSL intended to provide legal certainty of land rights in the form of certificates for the community based on the principles of simple, fast, smooth, fair, equitable and open and accountable so as to improve the welfare and prosperity of the community and the country's economy and reduce and prevent land disputes and conflicts. Meanwhile, Wiratmoko & Busro (2022) examined *the Complete Systematic Land Registration program, along with the obstacles and efforts made by the Pasuruan City Land Office. Based on analysis, it was revealed that the process of implementing a complete systematic land registration in Pasuruan City has generally been going well. The obstacles faced include the lack of openness of the applicant and the occurrence of land tenure disputes.*

Based on the description above and the previous studies above, it can be mentioned that it needs to conduct further research about Complete Systematic Land Registration (PTSL). Therefore, this study aims to examine and analyze the

weaknesses related to the acquisition of property rights on state land and the legal consequences of the issuance of property rights on state land through a legally flawed Complete Systematic Land Registration (PTSL).

2. METHOD

This study uses a normative legal research method, which examines the law from an internal perspective with the object of research is legal norms (Diantha, 2019:12). The types of approaches used are the statutory approach, the conceptual approach, and the historical approach. The legal materials used in this paper were collected through a literature study (Amiruddin & Asikin, 2016:68), namely by examining primary legal materials in the form of laws and regulations related to written legal issues, secondary legal materials in the form of journals and literature.

3. DISCUSSION

Weaknesses of Acquiring Property Rights on State Land Through Complete Systematic Land Registration (PTSL)

Suspension of Payment of Duties on Acquisition of Land and Building Rights (BPHTB) and Income Tax (PPh)

Basically, the land registration process is not purely the overall authority of the National Land Agency (BPN), because of the linkages with other agencies such as the Ministry of Finance in terms of Income Tax (PPh), Local Government in terms of Customs on Acquisition of Rights on Land and Buildings (BPHTB) and officials Land Deed Maker (PPAT) and Notary for making a deed as a condition for issuing certificates.

The cost of BPHTB and PPh is one of the requirements for the land registration process. Based on Article 90 paragraph (2) of Law Number 28 of 2009 concerning Regional Taxes and Regional Levies states: Taxes owed must be repaid at the time of the acquisition of rights as referred to in paragraph (1). So that the BPHTB payment must have been paid at the time of the acquisition of land rights or ownership rights to the apartment unit and BPHTB payments must be made before the rights are registered in accordance with the laws and regulations governing land registration.

In land registration activities for the

first time based on Government Regulation Number 24/Year 1997 which is regulated in Article 103 paragraph (2) letter h and i of the Regulation of the Minister of Agrarian Affairs Number 3 of 1997 concerning Implementation of Government Regulation Number 24/Year 1997 states:

In the case of transfer of rights to land parcels or Ownership Rights to Flats, the documents as referred to in paragraph (1) consist of:

h. proof of payment of Customs on Acquisition of Land and Building Rights as referred to in Law Number 21 of 1997, in the event that the duty is payable;

i. proof of payment of income tax as referred to in Government Regulation No. 1994 and Government Regulation No. 27/1996, in the event that the tax is payable.

In the first land registration based on the article above, if there is a registration of land rights, then the applicant's obligation to attach proof of payment of BPHTB and PPh payments, if the proof of tax payment cannot be attached, then the certificate of land rights cannot be issued.

In land registration activities through the Complete Systematic Land Registration (PTSL), the obligation to pay BPHTB and PPh as regulated in Article 33 of the Minister of ATR/BPN Number 6 of 2018 states:

(1) In the event that the recipient of the Land Rights Certificate does not or has not been able to pay the BPHTB and/or there is still arrears in the payment of PPh by another party on the land concerned, a Land Rights Certificate can still be issued.

(2) In the event that the PTSL participant does not or has not been able to pay the BPHTB, the person concerned must make a statement of the outstanding BPHTB.

The suspension of BPHTB and PPh as regulated in Article 33 of Permen ATR/BPN Number 6 of 2018 provides a space for convenience in carrying out land registration activities through Complete Systematic Land Registration (PTSL) to realize registered land throughout Indonesia, providing legal certainty and legal protection for people's land parcels throughout the territory of the Republic of Indonesia, but the facilities provided are not adjusted to the regulations regarding BPHTB and PPh taxes so that there are deviations from land registration arrangements and create weaknesses in

land registration through Complete Systematic Land Registration (PTSL).

The implication of the suspension of BPHTB and PPh fees and the issuance of land rights certificates is that at the time of registration of the transfer of rights or changes to the land book and certificate of land rights by the certificate owner, at the stage of checking the certificate online through the National Land Agency website then verified and notified that the certificate still has an outstanding BPHTB and hinders the subsequent transfer of rights. The transfer of rights or changes to the land book and certificate of land rights can only be carried out after the person concerned can prove that the BPHTB payable and/or the PPh payable has been paid off by each taxpayer.

Declaration of Ownership of Rights in Good Faith

The basis for implementing land registration activities through Complete Systematic Land Registration (PTSL) is regulated in Article 4 paragraph (4) letter f Permen ATR/BPN Number 6 of 2018, the implementation of PTSL activities is carried out with the stages of collecting physical data and juridical data.

Proof of land registration rights based on Government Regulation Number 24/Year 1997, which is regulated in Article 24 states:

In the event that there are no or not complete evidence tools as referred to in paragraph (1), proof of rights can be carried out based on the fact of physical possession of the land parcel in question for 20 (twenty) years or more in a row by the registration applicant and its predecessors.

This is very important to do, which aims so that later the land owner will have no difficulty in proving that it is his right to own land if later there is a prosecution from another party who also recognizes the land or it can be said as providing legal guarantees or legal protection for the right holder. as well as for the administration of orderly administration.

Juridical data for proof of rights in the implementation of land registration through a Complete Systematic Land Registration (PTSL) is regulated in Article 22 paragraph (2) of the Minister of ATR/BPN Number 6 of 2018, stating:

In the event that the evidence of community land ownership is incomplete or non-existent, it can be completed and

proven by a written statement regarding the ownership and/or physical control of the land parcel in good faith by the person concerned.

There is an inconsistency in Article 22 paragraph (2) of Permen ATR/BPN Number 6 of 2018 with Article 24 of PP Number 24/Year 1997 in terms of collecting juridical data for proof of land ownership, providing room for convenience that land registration activities are carried out through Complete Systematic Land Registration (PTSL). it can be done for any person without having to pay attention that the person has or does not have evidence of previous control, in the event that the juridical data is incomplete or not available at all, it can be proven by a letter of physical control of the parcel of land in good faith by the person concerned and the potential for falsification of the certificate statement from the party concerned.

The implication of the convenience provided by the government in collecting juridical data for proof of land ownership in Complete Systematic Land Registration (PTSL) activities is that at the time of registration of the transfer of rights or changes to the land book and certificate of land rights by the certificate owner, at the checking stage. the online certificate through the National Land Agency website is verified and notified that the certificate still has outstanding documents and hinders the next process of transferring rights. The outstanding document is in the form of an inheritance certificate which is not a requirement for land registration through a Complete Systematic Land Registration (PTSL) so that only one name is registered, namely the applicant while the other heirs who are entitled to the land are not registered in the title certificate. In addition, there is the potential for land dispute cases where there is a lawsuit related to the ownership of land rights by those who feel they are entitled to have rights to the land.

Announcement of Physical Data and Juridical Data

To fulfill the principle of publicity in proving land ownership, the announcement of physical data and juridical data is carried out. Related to the legal certainty is the principle of publicity which has different arrangements between Government Regulations and Ministerial Regulations. In Article 26 paragraph (1) PP Number 24/Year 1997 states:

The list as referred to in Article 25 paragraph (2) along with a map of the land parcel or parcels concerned as a result of the measurement as referred to in Article 20 paragraph (1) shall be announced within 30 (thirty) days in systematic land registration or 60 (sixty) days in sporadic land registration to provide an opportunity for interested parties to file objections.

Meanwhile, Article 24 paragraph (2) of the Ministerial Regulation of ATR/BPN Number 6 of 2018 states:

To fulfill the publicity principle in proving land ownership, juridical data and physical data on land parcels and maps of land parcels are announced using the Physical Data and Juridical Data Announcement form for 14 (fourteen) calendar days at the PTSL Adjudication Committee Office and the Village Head Office/ Ward.

The principle of publicity in the Complete Systematic Land Registration (PTSL) which is regulated in Article 24 paragraph (2) of the Minister of ATR/BPN Number 6 of 2018 is inconsistent with Article 26 paragraph (1) of Government Regulation Number 24/Year 1997 and creates uncertainty over the principle of publicity of land registration. Different arrangements of the principle of publicity provide room for potential disputes in the future, because according to the principle of *lex posterior derogat legi priori* legislation, it is a legal principle where new regulations can override or negate the old regulations. The theory of legal certainty is closely related to the system of legal norms proposed by Hans Kelsen, which states that legal norms are tiered and layered in a hierarchy, where a lower norm applies, originates and is based on a higher norm, a higher norm applies, originates and is based on a higher norm, and so on until a norm is called the basic norm (*grundnorm*). Article 24 paragraph (2) of the Ministerial Regulation of ATR/BPN Number 6 of 2018 is inconsistent with Article 26 paragraph (1) of Government Regulation Number 24 of 1997. Based on the *Stufenbau des Rechts* of Hans Kelsen, the legislation used is Government Regulation Number 24 of Year 1997. 1997 because Government Regulations have a higher degree than Ministerial Regulations, because the provisions of Ministerial Regulations of lower degrees cannot override the provisions of Government Regulations which are of a higher degree and should not arise inconsistencies in

Permen ATR/BPN Number 6 of 2018 with Government Regulation Number 24/Years 1997 because the Ministerial Regulation is based on and sourced from a Government Regulation.

The Delimitation Contradictory Principle in the Determination of Land Field Boundaries

To ensure legal certainty in land registration through a Complete Systematic Land Registration, of course, there is a step by step implementation of land registration as regulated in Article 4 paragraph (4) of the Minister of ATR/BPN Number 6 of 2018, one of which is the determination of land parcel boundaries, land parcels that are will be mapped and measured, after determining the location, its boundaries and according to the need, boundary markings are placed at each corner of the land parcel in question for the purpose of obtaining valid physical data.

In the implementation of the activity of determining land parcels carried out by the physical task force so that the placement of land parcel boundaries is based on the agreement of the parties interested in land registration based on the principle of *Contradictoire Delimitatie*. Contradictory delimitation is a norm used in land registration by requiring the holder of land rights to pay attention to the placement, determination and maintenance of land boundaries in a contradictory manner or based on the agreement and approval of interested parties, which in this case is the owner of the land bordering the land that is adjacent to the land have (Ismaya, 2013:42).

Article 17 paragraph (2) states: In determining the boundaries of land parcels for systematic land registration and sporadic land registration, efforts are made to arrange boundaries based on the agreement of the interested parties.

According to Gustav Radbruch, the application of the principle of delimitation contradiction must apply three values of identity, first, the principle of legal certainty that in measuring and determining the boundaries of land parcels must be carried out carefully and carefully so that the results can guarantee legal certainty to the parties. Second, the principle of legal justice, equality of rights for the parties, namely in terms of the designation of the boundaries of the land parcels, the parties have the same right to determine the boundaries of the land

parcels they own. Third, the principle of legal expediency, the principle of contradictory delimitation accompanies the principles of legal certainty and legal justice.

The implication of the non-fulfillment of the principle of delimitation contradiction in land registration through a Complete Systematic Land Registration (PTSL) is the potential for uncertainty regarding the location, area and boundaries of land parcels because the determination of land parcel boundaries is not based on the principle of agreement between the land owner and the adjacent land owner. There is an overlap between the old certificate and the new certificate or what is commonly called overlapping which has the potential to cause a dispute, so that the holder of land rights needs to seek information about the truth of the physical data and juridical data on the plot of land at the local Land Office.

Legal Consequences of Issuance of Certificates of Ownership of Legally Defective State Lands Through Complete Systematic Land Registration (PTSL)

Ownership of land rights certificates can be canceled if the decision contains a legal defect in its issuance or implements a court decision that has permanent legal force. Decree on the cancellation of land rights according to Article 104 paragraph (2) of the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1999 concerning Delegation of Authority for Granting and Canceling Decisions on the Granting of State Land Rights, is issued if there are:

Administrative legal disability.

Implement court decisions that have permanent legal force.

The cause of the cancellation of the certificate of land rights is due to a dispute between one party and another over the same piece of land, so that the party who feels aggrieved submits the cancellation. This case is in line with what was stated by Yamin Lubis that "there are still many problems in owning a piece of land, so that land ownership rights that have been issued by the Land Office must be cancelled (Lubis & Lubis, 2008:63). Therefore, in the context of handling and resolving land cases and can provide legal certainty for parties to disputes related to the use, ownership and control of land in Indonesia.

Article 107 of the Minister of Agrarian Affairs Number 9 of 1999 states:

The administrative legal defects as referred to in Article 106 paragraph (1) are:

Procedural error;

Errors in the application of laws and regulations;

Right subject error;

Rights object error;

Right type error;

Area calculation error;

There are overlapping land rights;

The juridical data or physical data is not correct; or

Other errors of an administrative nature.

Based on the description above, administrative law defects in certificate issuance are determined by 9 (nine) types of errors. Therefore, if there is only one mistake in the issuance of the land title certificate, the party who has objections can file for the cancellation of the certificate.

Errors in the decision to issue land rights certificates are not included in the civil or criminal domain, but administrative dispute data can be requested at the land office (Putra, 2015). Administratively, the land office apparatus cannot refuse an application for land registration in the context of first-time land registration or land registration due to a change in the subject of the right or object of the right, if administratively the application file has fulfilled the requirements, because the land apparatus does not have the legality to examine juridical data regarding the contents. and the truth of the land certificates controlled by the applicant because it is the applicant's responsibility because the judicial review of the correctness of the applicant's rights is not justified by the land apparatus, so that the applicant is a person who is considered to be present at that time with good intentions. Cancellation of land rights due to defects in administrative law issued by the competent authority, on the basis of the applicant's application and without the applicant's application. Cancellation of land rights can also occur because of implementing court decisions that have permanent legal force. Court decisions which have permanent legal force include being declared null and void or not having legal force or which are essentially the

same as that. The request for cancellation is submitted directly to the Minister or Head of the Regional Office or through the Head of the Land Office. One request for cancellation is only for one or several certain land rights which are located in one Regency/City in accordance with Article 124 of the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1999 concerning Delegation of Authority for Granting and Cancellation of Decisions on the Granting of State Land Rights (Sumardjono, 2001:63). The court has the authority to decide the invalidity or declare that it has no legal force on a certificate, but the court is not authorized to cancel the certificate in question. The difference in principle lies in the authority and legal consequences. The statement that a certificate has no legal force is the authority of the court, while the cancellation of the certificate is the authority of the National Land Agency.

Based on the negative publicity system with positive tendencies adopted in Indonesia, which implies that the strength of proof of land rights certificates as referred to in Article 32 paragraph (1) of PP Number 24/Year 1997 shows evidence of rights owned by a person does not yet indicate that person is the right holder of the right actually. In other words, the certificate can be canceled at any time if it turns out that there is another party who can legally prove that he is the real owner (Mahadewi, 2013). So that the certificate can be declared null and void or can be canceled by a court decision. However, if the conditions stipulated in paragraph (2) have been met, it will result in a positive publication system that applies. This means that the certificate is valid as an absolute and irrevocable piece of evidence. In PP No. 24 / 1997 including the provisions of Article 32 paragraph (2), it is a statutory regulation established in accordance with the procedures for establishing laws and regulations that apply as positive and binding law. Including for court judges who examine and decide a case should be guided by the applicable laws and regulations. In the negative publication system, the certificate is not an absolute evidence as stipulated in Article 32 paragraph (1) of PP Number 24/Year 1997, so it is still possible to be canceled by a court decision. However, the certificate can be turned into absolute (positive) evidence and cannot be canceled if certain conditions have been fulfilled as stipulated in Article 32

paragraph (2). Including for court judges who examine and decide a case should be guided by the applicable laws and regulations in accordance with the principle of legality (Khairina, 2014).

Cancellation of land rights to implement court decisions that have permanent legal force can only be issued based on the applicant's application, this is confirmed in Article 124 paragraph (1) PMNA/Head of BPN Number 9 of 1999, furthermore in paragraph (2), the said Court Decision states null and void or have no legal force or the essence is the same as that.

4. CONCLUSION

Based on the results of the analysis, it can be concluded that the weaknesses contained in the implementation of land registration through the Complete Systematic Land Registration (PTSL) are the inconsistency of norms in Permen ATR/BPN Number 6 of 2018 with Government Regulation Number 24 of 1997. The inconsistency is contained in Article 33 of the Ministerial Regulation of ATR/BPN Number 6 of 2018 regarding the suspension of outstanding BPHTB and PPh owed, Article 22 paragraph (2) of the Minister of ATR/BPN Number 6 of 2018 regarding the statement of ownership of rights in good faith, Article 24 paragraph (2) Permen ATR/BPN Number 6 of 2018 related to the principle of publicity, namely the announcement of physical data and juridical data, and the application of the delimitation contradiction principle in determining the boundaries of land parcels. The legal consequences of the issuance of a certificate of ownership of state land through a Complete Systematic Land Registration (PTSL) which is legally flawed, namely cancellation due to a defect in administrative law and cancellation by implementing a court decision that has permanent legal force as regulated in Article 104 paragraph (2) of the Ministerial Regulation Agrarian/Head of the National Land Agency Number 9 of 1999 concerning Procedures for Granting and Cancellation of State Land Rights and Management Rights.

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