



The Legal Disputes of Land Right's Overlapping Ownership on the Complete Systematic Land Registration Program (PTSL) in Indonesia

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Abstract: Objectives This study has objectives to analyze the obstacles during the complete systematic land registration program (PTSL) program, means the overlapping ownership of land rights, **Prior Work** the PTSL program are provides legal certainty of land ownership for Indonesian society. As written in the 1945 Constitution of the Republic of Indonesia, Article 33, Paragraph (3) mandates land use for people's prosperity, **Approach** The methodology that used is a descriptive analysis by explaining the data in the field, **Results** The results show that a double certificate (overlapping ownership) was found after the PTSL program. Therefore, it is recommended that the Land Office should be more thorough and accurate for land measurement and mapping, **Implications** Land history is essential to ensure legal certainty regarding land ownership. This cannot be ignored because many land disputes have occurred because of overlapping cases, **Value** The PTSL program can be used to determine land certification impediments due to overlapping ownership. Thus, people will know the latest status of their land.

Keywords: Lang rights; Land ownership; PTSL; Land registration; Overlapping

1. Introduction

The social function of land rights are comes from Leon Duguit's theory of property as social function. It is first emerged in an attempt to oppose the classic liberal concept that developed at that time. The classic liberal concept dominates the concepts of politics and modern law. Classic liberal concept is linked to the property ownership or the land ownership rights which dominated the thought of modern law and politics. It focuses on justifying property rights and encouraging personal independence and labor (Makarov et al., 2018, p. 107). This means that the ownership rights of land are absolute subjective rights (Rejekiningsih, 2016, p. 12). The legal framework for land ownership and control by individuals and organizations for business and development purposes is established in the national

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land law. Each land use right under the National Land Law includes the rights of Indonesian citizens to land (Article 1, paragraph (1), the right to state control (Article 2, paragraphs (1) and (2) of the Law Basic Agriculture) and individual rights to land, including land rights and land security rights (Anatami, 2017, p. 12).

As stated in Government Regulation No. 12/2021 regarding the Amendment of Government Regulation No. 14/2016 on the implementation of Housing Areas and Living Areas in Clause 1, Article 1. (3), stated that settlement areas encompass urban and rural regions which serve as residential and activity hubs outside of protected areas. These areas have function to support livelihoods and facilitate daily life. The government has sent positive signals by prioritizing agrarian reform. This involves that integrating the land asset legalization determination program with access empowerment to optimize land use and potential. Agrarian reform is not just land distribution, but a program to improve development and community welfare. However, this program will provide enormous "homework" for the Ministry of Environment and Forestry because of the many overlapping uses of forest areas with the non-forestry sector, both in the nature of excess and land seizure.

Comprehensive Systematic Land Registration or PTSL was implemented which aimed to accelerating the land registration process and improving the quality of national land data based on Presidential Directive No. 2/2018 on promoting Fast and comprehensive systematic land registration in all regions of Indonesia. The term of complete village has become the basic foundation and annual target for annual PTSL implementation starting from 2021 (Pratama & Santoso, 2021, p. 98). The achievement of land registration throughout Indonesia through the PTSL program has reached 86.2% (Suranto & Djojmartono, 2023, p. 200). To enhance the achievement of quality land cadastre, the Ministry of Agriculture and Regional Planning/National Land Agency (ATR/BPN) together with the World Bank through the Program for the Acceleration of Agrarian Reform (PPRA) which continues to increase the achievements of Land Parcel Mapping (PBT) through PTSL based on Community Participation (PTSL- PM). Since 2019, PTSL-PM has been place in 7 (seven) provinces in Indonesia, including Jambi, South Sumatra, Riau, and West, East, Central, and South Kalimantan provinces, and expanded in three java provinces, including West, East, and Central Java.

The Land Tenure Specialist from the World Bank, Willem Egbert van der Muur appreciated the achievements of land registration in Indonesia. He said that Indonesia became the world champion in terms of land mapping, as evidence of the progressive achievements of land registration. Until 2023, the PTSL program was based on Community Participation (PTSL-PM) in Indonesia. Willem Egbert said that the PTSL-PM focuses on social and environmental risk analysis activities with a safeguard approach. Safeguards aimed to identify and mitigate social conflicts and land disputes that can affect the implementation of PTSL based on Community Participation (PTSL-PM). Therefore, Indonesia could complete the cadaster.

However, in Indonesia, the land tenure system has weakness which not providing legal certainty for land rights' holders (Margareta & Huda, 2023, p. 33). Thus, overlapping over land ownership is often occurred.

Overlapping disputes over land ownership, which are still a polemic, should be solved or discussed so that the land distribution can be synergized with PTSL program. This step can be maximally formulated between the land distribution and PTSL. Therefore, the Ministry of Agrarian Affairs and Spatial Planning / National Land Agency (ATR/BPN) are combines the distribution of land organized by the Regional Government to be proposed to the National Land Agency (BPN) from the inventory process of Cultivation Rights Title (HGU) or Building Rights Title (HGB) into land distribution to people with certification through the PTSL program. Thus, the PTSL are based on President Joko Widodo's program, can fulfill the guarantee of legal certainty of land ownership for all Indonesian people. In this way, land rights owners can defend their land from other parties. The PTSL program can identify obstacles in its implementation, which is related to the overlapping ownership of land rights. Land ownership in Indonesia is a complicated problem. The disparity in land ownership and tenure have resulted in several land disputes, emphasizing the necessity for prompt resolution. Hence, this study is aimed to analyze the obstacles faced during the PTSL program, specifically the issue of overlapping ownership of land rights.

2. Literature Review

2.1. Settlement Area

As written in Government Regulation No 12/2021 on the changes of Government Regulation No. 14/2016 on the implementation of residential and residential areas, Article 1, paragraph (3), a residential area refers to a settlement environment outside protected zones, whether urban or rural, that supports livelihood activities and serves as a living space. The basic definition of a settlement in Law Number 1 of 2011 concerning Housing and Settlement Areas is a part of a residential environment that includes many housing units equipped with public infrastructure, amenities and services. It supports other functional activities in urban or rural areas. Housing is an essential basic need in human life. From a series of five human life needs such as food, clothing, housing, education and health, settlement occupies a central position; thus, increasing settlement area will also improves the quality of life (Aspin & Nafsi, 2021, p. 39). Currently, humans live not just as a place of shelter but more than that, including a house and all its facilities, such as drinking water supplies, lighting, transportation, education, health and others. Initially, a residence was built solely to fulfil physical needs, then ownership of a residence is developed to function as a psychological, aesthetic need, to mark social and economic status and others. It is

the meaning of settlements in society today. The choice of residential location is based on various factors, including:

- 1) Convenience factor, namely the ease of reaching a place. The convenience factor in a settlement can be connecting or entrance road which is a road that connects the entrance to the public road network to the city center. This factor will influence transportation costs and the length of travel time for residents.
- 2) Utilities are the complete facilities available in housing, including electricity, drinking water, and sewerage.
- 3) Land Status Factor is a land with a socio-economic function. In regulating land rights and space for use, it must be able to improve people's welfare. Land status plays a vital role in residents' continuity because it provides legal certainty over the land to which they have rights
- 4) Land Use Factors. Residential areas should not use productive land as much as possible and avoid built-up areas. In this way, land use will be more effective and mutually supportive with other activities.
- 5) Expansion Possibility Factor. It is hoped that residential areas will be able to accommodate activities that are already difficult to develop in the city center, so that residential areas do not stand alone and cannot be separated from the city system.
- 6) Service Center Factor. A good housing location is a location that makes it easy to reach all places because various services are available, both social and economic.

2.2. Land Rights Ownership

Land is the origin of all material wealth since it provides resources that can be utilized and valued. As a consequence, land records are essential for formulating policies, implementing regulations, managing land to create wealth for all people, and ensuring legal certainty for the interests of landowners. In the current cognitive map, people's relationship with the land tends to be proven with a certificate. Certificates are essential documents in social reality because they can be used for economic purposes. Some parties do not believe in land ownership without written documentary evidence. People consider certificates crucial, but there are still many plots of land that have not been certified. This condition shows that the implementation of the policy to accelerate land registration has yet to be effective, so at the beginning of 2017, the direction of the land management policy was through an accelerated PTSL program.

2.3. Complete Systematic Land Registration Program (PTSL)

Land registration is a vital and fundamental activity in land administration. Many policies and provisions have been established to address land registration, but there are still many problems such as overlapping ownership, thus The Basic Agrarian Law (UUPA) requires all land to be registered to ensure legal security over land. The land registration is an important proof of the acquisition (existence), transfer, encumbrance, and cancellation of the rights. As stated in Chapter I Article 1 Number (4) on General Provisions of Government Regulation No. 18/2021 on Management Rights, Land Rights, Flat Units and Land Registration, land rights are rights derived from the legal relationship between the right holder and land to control, own, use, and maintain land in both space above and/or below ground. Meanwhile, in the number (9), it is explained that land registration involves continuous, sustained, and regular government activities to collect, process, maintain, record, and represent the physical and legal data. The data consist of maps and lists outlining land plots, aboveground and underground spaces, and apartment units, accompanied by letters of proof detailing the owners' rights and various documents which related to them.

The PTSL Program is a land registration process carried out simultaneously for all land registrants throughout the territory of the Republic of Indonesia in a village/subordinate or other equivalent names, including collection of physical and legal data about one or more land registration objects. The PTSL object encompasses all types of land, including untitled land, registered land, government/regional government land, state-owned/regionally-owned enterprise land, customary land, forest land, transmigration land, and others. In this way, the object of the PTSL is very broad and it can be said that it covers all land rights as long as they have not yet been registered (Syuib & Aulia, 2021, p. 217).

To promote economic growth, establish legal certainty, and prevent land disputes, the Ministry of ATR/BPN conducts a program for Mapping, Registration, and Certification. Following these objectives, a policy reforms for land registration based on acceleration has been carried out with the target of all registered areas through the implementation of the PTSL program. PTSL is part of the Nawacita program of the President of the Republic of Indonesia (Joko Widodo), with a target of five million certificates in 2017 for all of Indonesia. One of the *nawacita* program is concerned with enhancing people's welfare by supporting land reform and a land ownership program of 9 million hectares for peasants (Dita et al., 2022, p. 201). Thus, it is hoped that PTSL program can measure all community land areas and grant them legal recognition in land certificates.

3. Methodology

This study is used descriptive analytical method that describe the reality in the field and analyze it. It is conducted using an empirical juridical approach with the data collected through observation and interviews, through a literature review, including laws and regulations that related to the PTSL program, land redistribution, and other legal documents. Empirical juridical approach used to understand the effects of law on various aspects of society, such as regulated industries, citizens, and judges.

4. Results and Discussion

4.1. Land Rights Ownership in PTSL Program

Land rights are a legal relationship defined in Article 4 of the UUPA, which states that land rights also give authority and obligations to the rights holder. Therefore, land rights are someone's right to own some part of the Earth's surface, which is limited and has two dimensions: length and width (Syuib & Aulia, 2021, p. 217). To guarantee a legal certainty, the PTSL program was implemented to accelerate the land registration process and increase the quality of national land data based on Presidential Instruction No. 2/2018 on the Acceleration of Complete Systematic Land Registration in all regions of Indonesia. The term complete village has become the basic foundation and target of the annual PTSL program.

Land registration information is typically categorized based on its goals, including juridical, fiscal, land-use, and multipurpose cadastre. Land registration records various land data including geographical data (coordinates, maps), property address, land use, property information, nature and duration, details about building and apartment construction, population and property tax values. The recorded data can be used to push land transactions and markets, or help economic administration, which covers spatial layout or environmental conservation. Therefore, the implementation of land registration is related to the method of recording parts of the land, depending on the purpose of land registration. The benefits of good land administration can be classified into two aspects: the security of the use or utilization of land for the owner (private) and the availability of land information for land management related to the welfare of the entire community (public).

The primary intent of land registration, according to Article 3 letter a of Government Regulation (PP) Number 24/1997 is the main purpose of registration as directed by Article 19 UUPA. In the Letters b and c, however serve as supplementary purposes. When carrying out land certification, it would be beneficial to realize both private and public interests. However, the UUPA mandate, as the PP number 24/1997 is preferable since it relates to the principles of safe land registration (Guntur et al., 2017; Nuryanto & Ma'ruf, 2020). The principle of safe land registration aims to demonstrate that land registration must be conducted carefully and thoroughly so

that the results can provide a guarantee of legal certainty in accordance with the (principal) objectives of land registration.

A careful and thorough registration is expected to bring benefits in terms of providing a high level of security. Security is the core of land registration. All stakeholders, including the landowner or landlord, the buyer or lessee, the creditor against the land, the neighboring landowner with rights over the land, and so on, need to be secure. To ensure security, land records must clearly define the land ownership and identify/recognize the rights and interests of other parties. A land right, once registered, should be free of claims or subject to certain exceptions. Attention must be paid to any claims, burdens, or restrictions on land use during registration. Registration for guaranteeing legal certainty must reflect the data/records defining land areas and descriptions of their owners, as well as restrictions on the rights to an interest. Thus, obtaining a sense of security in land use requires not only land tenure but also written documentary evidence (land certificates).

Article 3 paragraph (1) of the Regulation of the Minister of Agrarian and Spatial Planning/Head of National Land Agency No. 12 of 2017 mandates that PTSL is to be implemented for all land registration matters across the Republic of Indonesia. In line with paragraph (2), this regulation applies to all regions within the country. PTSL is implemented to ensure the legal certainty of community land rights, which includes the activities of measuring and mapping land areas and registering their rights in the land book. Thus, before the registration it is necessary to ascertain the location and boundaries of the land areas, the land owner, and the type of legal relationship through research or investigation of land history.

4.2. Types of Overlapping Land Rights in PTSL Program

Land has now become a complex social problem requiring solutions with a comprehensive approach. The evolution of the type and content of land disputes is no longer just a land administration issue that can be resolved through administrative law, but it has expanded into the political, social and cultural spheres and is related to issues of nationalism and human rights. Land conflicts are a major problem in developing countries, especially related to infrastructure development projects. These conflicts result from property and human rights violations, institutional inconsistencies, and local population distrust (Magsi et al., 2017, p. 25). The primary causes of these conflicts are changes in the rural economy and displacement of the local population due to land use decisions for infrastructure projects (Jensen et al., 2019, p. 423).

Land disputes occur because of the land's high economic value, which often functions as a symbol of a society's existence and status. Thus, the value of land can encourage everyone to own, maintain, and take good care of it. The multidimensional

roots of land conflicts and disputes cannot be seen as merely legal issues but also related to other non-legal variables, including weak land certification regulations, which have not yet reached 50% of the process (Darwis Anatami, 2017, p. 10).

Land disputes that arise include those related to inheritance, issuance of certificates, legal acts of transfer of land rights (sale and purchase, grant) and acquisition of land for public purposes. In general, sources of land disputes can be divided into 5 (five) categories (Farizky, 2018, p. 35):

- a) The dispute was caused by government policies during the New Order era.
- b) Overlapping laws and regulations regarding agrarian resources.
- c) Overlapping land uses.
- d) Quality of human resources from implementing officials.
- e) Changing people's mindset regarding land control.

Overlapping decision-making by agencies directly involved with land also contributes to the emergence of land disputes. Another often forgotten cause of disputes and issues regarding land certificates are natural disasters, which lead to the loss or destruction of the documentation proving land rights. In general, land disputes arise due to the following factors:

- a) Incomplete rules;
- b) Inconsistency in rules;
- c) Land management agencies must better meet the demand and quantity of available land;
- d) Inaccurate and incomplete data;
- e) Missing or incorrect land data;
- f) Human resources to resolve land disputes are limited;
- g) Land transactions have errors;
- h) Erroneous land transactions;
- i) Act of rights claimant or
- j) The existence of settlements from other agencies resulting in overlapping authority.

The Cases that occurs due to the issuance of two or more land certificates for the same piece of land will have an impact on the uncertainty and lack of legal protection of land rights. This overlapping case indicates an error in the fulfillment of the physical and legal aspects. The physical aspects relate to information about the location, boundaries and size of the land area. The legal aspect refers to information

about the legal status of the land area and its right holder (Marryanti & Nurrokhman, 2021, p. 9).

The results are explain the existence of many Certificates is due to (a) the land office factor in the case of lack of caution in researching the history of land plots and mapping the boundaries of related land plots to land allocation. The certificate of the subject is in dispute, the land agency did not conduct an investigation and did not see the image of the cadastral plan in possession. (b) The Factors from applicants who need better faith in conducting land registration to avoid future land disputes.

Land dispute settlement is first resolved through mediation between parties, with a third party acting as a mediator. If mediation does not reach an agreement, the dispute process continues through the court. Land Office officials should be more thorough and careful, especially when conducting measurements and mapping (Farizky, 2018, p. 35). Therefore, overlapping occurs because the old certificates are not mapped onto the land registration map. This information is available after conducting PTSL to determine whether occupied land is state, government or private.

4.3. Economic Implication on Overlapping Ownership of Land Rights

Land gives not only economic and political functions but also cultural values. Land is not a mere object but a social space, relationship builder, competition, domination, and politic. The land rights become a trigger that may change the condition. The land is an agrarian source with two main aspects, that is, aspects of ownership and control and aspects of use and utilization (Syahyuti, 2006, p. 20). Philosophically, the land is viewed as a multidimensional vision, which includes (Nugroho, 2002, p. 76): (1) Land means of production that can bring prosperity, (2) Land can determine people's position in community decision-making, (3) Land can determine social status of high and low association of owners and (4) Land is sacred, because it deals with issues of inheritance and transcendence.

Land is an element that has the economic value supports economic growth and social value in the form of land rights, which are not absolute. The State ensures and respects citizens' land rights; therefore, legal certainty is necessary for control over legally protected land. The provisions of civil law on objects/property are described in a number of laws, for example Law No. 35 of 1960 on agricultural principles (UUPA) which has a relatively high economic value for land. Land is a symbol of existence and social status in society. Everyone is encouraged to own, protect, and take good care of their land because of its strategic value.

Realizing the importance of land for humans, the government, in various policies, it is trying to regulate land ownership rights for the benefit of humanity in Indonesia. The legal impact of overlapping land ownership rights which also results in various impacts not only in the legal sector but also affects the people involved, who incur pretty high costs, and also social impacts, namely the emergence of social estrangement between the community and agencies. Government which will hinder the coordination of public performance, and there will also be a decrease in public trust in government agencies (Julianti et al., 2021, p. 14).

5. Conclusion

As a form of legal certainty of community land rights, PTSL is organized, which includes the measurement and mapping of land parcels and the registration of their rights in the land book. Registering land parcels in the land book guarantees certainty regarding the object, subject, and status/rights to the land. During the PTSL program, it is common for counterfeit, fraudulent, or conflicting land certificates to circulate within the community. As a result, landowners should verify the accuracy of physical and legal information regarding specific land plots at their local Land Office. Thus, the legal impact of overlapping land ownership rights also results in various impacts not only in the legal sector but also economically affecting the community involved in incurring high costs and social impacts, namely the occurrence of social estrangement between the community and government agencies that will hamper the coordination of public performance, as well as a decrease in the level of public trust in government agencies.

For further studies, it is suggested to explore and compare on the land registration programs and practices in other countries, to identify best practices and lessons that can be applied to the Indonesian context.

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