

Analysis of Old Proof of Rights Holders According to Government Regulation Number 18 of 2021



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ABSTRACT: In the ownership of land rights for holders of old title evidence, it is regulated in Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats Units and Land Registration. PP No. 18 of 2021 explains that holders of proof of old rights are required to register evidence to obtain a certificate within a maximum period of 5 (five) years from the enactment of the PP. Seeing the existence of this PP, the government indirectly forced the public to register land in order to avoid overlapping evidence in land issues. Normative legal research uses a conceptual approach through analysis of regulations and theories that aim to explain the legal consequences for holders of evidence of old rights who do not register their evidence within the specified timeframe. The result is that the holder of evidence of old rights is in the form of evidence of former western rights which have been declared invalid and have become state-owned land since the enactment of PP No. 18 of 2021, registration can be done through a statement of physical possession. Meanwhile, evidence of former customary property owned by individuals is required to be registered within a maximum period of 5 (five) years. If registration is not carried out, then the former customary land can be concluded as state property and the evidence owned is invalid and only serves as a guide in the framework of land registration. However, the results have not yet explained in detail whether the holder of the old title still has the right to register the land after not registering it after a specified period of time.

KEYWORDS: Proof of Old Rights, Land Rights, Land Registration

I. INTRODUCTION

In the ownership of land rights for holders of old title evidence, it is regulated in Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats Units and Land Registration. PP No. 18 of 2021 explains that holders of proof of old rights are required to register evidence to obtain a certificate within a maximum period of 5 (five) years from the enactment of the PP. Seeing the existence of this PP, the government indirectly forced the public to register land in order to avoid overlapping evidence in land issues. Normative legal research uses a conceptual approach through analysis of regulations and theories that aim to explain the legal consequences for holders of evidence of old rights who do not register their evidence within the specified timeframe. The result is that the holder of evidence of old rights is in the form of evidence of former western rights which have been declared invalid and have become state-owned land since the enactment of PP No. 18 of 2021, registration can be done through a statement of physical possession. Meanwhile, evidence of former customary property owned by individuals is required to be registered within a maximum period of 5 (five) years. If registration is not carried out, then the former customary land can be concluded as state property and the evidence owned is invalid and only serves as a guide in the framework of land registration. However, the results have not yet explained in detail whether the holder of the old title still has the right to register the land after not registering it after a specified period of time.

II. DISCUSION

The current national land law in Indonesia is the result of the adoption of the Dutch colonial period which came to colonize Indonesia bringing unwritten law and written law. One of the written laws in the agrarian sector as an example of the Dutch land sub-field imposes individual rights to land, namely Eigendom rights, Opstal rights, Gebruik rights which are then spread in the country of its jurisdiction, namely Indonesia, while before the Dutch colonization, Indonesia already had its own law, namely Customary Law and customary property rights, namely group rights, kebulan and others. So that after the Dutch imposed the law he brought in Indonesia there was dualism in law and also dualism in the institution of individual rights, especially land rights.

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After the independence of Indonesia, the government renewed the national law, especially in the field of land in a complex manner on September 24, 1960, namely the Basic Agrarian Law. So with consideration of the dualism of land law in Indonesia, the validity of the old regulation was ended with the birth of the UUPA and revoked the law. (Bachtiar, 1983): 1) Agrarische wet (S.1870-55) as contained in article 51 of the "wet op de staatsinrichting van netherlands indie" (S.1925-447) and the provisions of the other paragraphs of that article; 2) Domeinverklaring in article 1 of the "Agrarisch Besluit" (S. 1870-118), Algemene Domeinverklaring (S. 1874-1191a), Domeinverklaring for Sumatra in article 1 (S. 1877-94f), Domeinverklaring for the menado regency in article 1 (1877-55), Domeinverklaring for the zuider en Ooterafdeling van borneo in article 1 (S.1888-58). 3) Koninklijk Besluit April 16, 1872 No. 29 (S. 1872-117) and its implementing regulations. 4) Book II of the Indonesian Civil Code insofar as it relates to the earth, water and natural resources contained therein, except for the provisions concerning mortgages which are still in force. The merger and abolition of rights before the enactment of the UUPA is a simplification of existing land law in Indonesia as mentioned in the foundations of the formation of the UUPA.

(Ari Sukanti Hatagalung, 2012). Land rights with converted lands to be registered for the first time according to the UUPA aims to ensure legal certainty carried out by the Indonesian government. However, previously, land in Indonesia was registered only as a taxation system for the benefit of the government itself and not for the benefit of landholders. Thus, land registration has different types of registration, namely Legal Cadaster for legal certainty and certainty of rights, the purpose of which is contained in Article 19 paragraph (1) of the UUPA. (Indonesia, Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Pokok Dasar dan Pokok-Pokok Agraria). The implementation is carried out carefully and meticulously with the result in the form of a land certificate as proof of legal rights. While Fisical Cadaster registration aims to facilitate the tax collection of people who own land directly, but its implementation is less thorough when compared to Legal Cadaster if there are differences in the measurement of land area, the government is not concerned. Because the responsibility in this case is the Ministry of Finance, Director General of Taxes, Director of PBB, so the result of registration is not a proof of rights, but a proof of tax payment. One proof of tax payment in the Dutch colonization at that time was the Indonesian Verponding. The implementation of the conversion of land rights includes: Eigendom Rights After the enactment of the UUPA, eigendom rights are converted into:

- a. Eigendom rights where the subject of the eigendom land rights holder complies with Article 21 of the UUPA, the eigendom rights become property rights.
- b. An eigendom right belonging to a foreign government, which is used for the purposes of a residence for representatives and embassy buildings, becomes a right of use after the UUPA comes into effect.
- c. An eigendom right belonging to a foreigner, a citizen who in addition to his Indonesian citizenship has foreign citizenship and a legal entity, which is not designated by the government as referred to in Article 21 of the UUPA, becomes:
 - a) hak guna-bangunan (right of use)
 - d) An opstal right becomes.
 - b) hak guna-bangunan with a remaining term of 20 years at the most.
 - c) Hak erfpacht for large plantations becomes a hak guna usaha with a maximum period of 20 years and for housing in cities/rest areas becomes a hak guna bangunan with a maximum period of 20 years.
 - d) Hak gebruik becomes hak pakai with a maximum period of 20 years.
 - e) The right to lease land on state land becomes a hak pakai with a maximum term of 20 years. Customary property rights are converted into property rights Customary property rights are converted into property rights if the owner of the land rights meets the requirements as a subject of property rights, namely a single nationality. However, for owners whose conditions are not met, customary property rights are converted according to the designation of the land, namely:
 - a. Agricultural land is converted into Cultivation Rights Title with a period of 20 years.
 - b. Non-agricultural land is converted to Building Rights Title with a period of 20 years.

If within the specified period, the right is removed and becomes state land. The conversion of former customary property rights must also be followed by registration since government regulation number 10 of 1961 came into effect and was later changed to government regulation number 24 of 1997 concerning land registration. Based on this explanation, the registration of former customary land rights can be converted into property rights in accordance with the land rights contained in the UUPA. As long as the right holder has fulfilled the requirements as a holder of property rights, the former customary land after being registered will be converted into property rights. Based on Article 1 point 9 of Government Regulation Number 24 of 1997, the first time land registration is an activity carried out on land that has not been registered according to Government Regulation Number 10 of 1961 and Government Regulation Number 24 of 1997 in the article it has been explained that the object of the first time land registration is land that has not been registered, so for former customary land that has not been registered and has not been converted to ensure legal certainty in accordance with the message of Article 19 of the UUPA, the first time land registration can be carried out.

The first time land registration originating from the conversion of old rights is proven by written evidence in the form of proof of rights to obtain the truth of juridical data in land registration. The proof has been regulated in Government Regulation

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Number 24 of 1997, which consists of proving new land rights and old land rights regulated in Article 24 of Government Regulation Number 24 of 1997 concerning land registration. The first time registration based on PP number 24 of 1997 which still uses a manual system, but since the enactment of PP number 18 of 2021 which has used an electronic system, it is stated in its explanation in article 84 paragraph 2 of PP number 18 of 2021 that the first time land registration activities include collecting and managing physical proof of rights, and bookkeeping, issuing certificates, presenting physical data and juridical data and keeping public registers and documents in the form of electronic information data based on the first time land is not specifically discussed in PP number 18 of 2001. So that some of the provisions of the first time land registration are still based on PP number 24 of 1997 from the results of the analysis of PP number 18 of 2021 related to the provisions of land registration being changed with an electronic system that is carried out in stages and the provisions of evidence derived from old rights, namely evidence of former heavy rights is no longer recognized as evidence while evidence of former customs is given a period of 5 years to be registered.

The first time land registration of former customary rights can be done with evidence in the form of:

- a. Petuk pajak bumi, kitir, pipil, verponding indonesia and other evidence of former customary property rights before 5 years of PP Number 18 of 2021 applies the tool can still be used as evidence in land registration.
- b. The deed of transfer of rights made under the hand affixed with a witness mark by the adat/head of the village/kelurahan made before the enactment of this government regulation with the basis of the transferred matter or before 5 years of registration of former customary rights can be done with the above evidence to assess the existence of rights.

However, after 5 years the evidence is only as an indication, this provision causes the presence or absence of written evidence of customary rights files owned by the community in registering their land to be carried out by recognizing rights, this has been further explained in Permen ATR / BPN number 16 of 2021 in article 76A (2) letters a and b which states that written evidence of former customary land can be used again as a means of proving land rights, only as an indication in the context of the registration as referred to is carried out with a rights recognition mechanism, application for land registration through a rights recognition system. In the mechanism of recognition of rights, a statement of physical control must be included in accordance with the provisions of Perma ATR / BPN number 16 of 2021 because the evidence owned is only used as an indication of the existence of rights to be registered. According to Boedi Harsono regarding ownership of land rights there are three possible means of proof.

(Boedi, Hukum Agraria Indonesia Sejarah Pembentukan Undang-Undang Pokok Agraria Isi Dan Penjelasannya Jilid I Hukum Tanah Indonesia, 2008) namely:

- 1) Complete written evidence does not require additional evidence
- 2) Written evidence as referred to no longer exists, strengthened by witness testimony and / or statements concerned.
- 3) All written evidence no longer exists, replaced by witness testimony or statements concerned. The enactment of PP number 18 of 2021 in land law is a government effort in order to accelerate the land registration program.

Land registration based on article 1 point (9) of PP Number 18 of 2021 is a series of activities carried out by the government continuously, continuously and regularly including collecting, processing, bookkeeping, and presenting and maintaining physical data and juridical data in the form of maps and lists, regarding land parcels, land space, underground space and housing units. Based on the analysis of PP Number 18 of 2021 to obtain certainty for the community of rights holders of former customary land rights is to register the former customary land rights that are controlled so that they get a recognized proof of rights. The rules must be registered for former rights as described in Government Regulation Number 18 of 2021 which aims to provide legal certainty by registering the former customary land. This is also explained in Article 96 of PP number 18 of 2021 that the evidence of the former customary land object has not been issued a certificate. An old title deed such as a land tax receipt is not evidence of ownership of the person whose name appears on the tax receipt; it is merely a sign of who must pay taxes on the land to the government. Rather, it is merely the basis for the issuance of a land certificate.

The old certificate of title is only one of the written proofs of ownership of land that can be used as valid evidence. Evidence of ownership basically consists of evidence of ownership in the name of the right holder at the time of the enactment of the UUPA and, if the right is subsequently transferred or transferred, evidence of the transfer of rights successively to the hands of the right holder at the time of the bookkeeping of rights. The written evidence referred to in the explanation of Government Regulation No. 24/1997. The written evidence referred to can be in the form of (Indonesia, Peraturan Pemerintah Tentang Pendaftaran Tanah, PP Nomor 24 Tahun 1997, LN Nomor 59 Tahun 1997):

- 1) "Grosse deeds of eigendom rights issued under the Overschrijvings Ordonnantie (S.1834-27), on which a note has been affixed that the eigendom rights concerned have been converted into property rights;
- 2) Grosse deeds of eigendom rights issued under the Overschrijvings Ordonnantie (S.1834-27) since the enactment of the UUPA until the date on which land registration is carried out in accordance with Government Regulation Number 10 of 1961 in the area concerned;
- 3) Surat tanda bukti hak milik issued under the relevant Swapraja Regulation;

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- 4) TA certificate of ownership right issued under Agrarian Ministerial Regulation No. 9/1959;
- 5) A decree granting a hak milik from an authorized official, either before or since the enactment of the UUPA, which is not accompanied by an obligation to register the right granted, but has fulfilled all the obligations mentioned therein;
- 6) Deed of transfer of right made under the hand with a witness mark by the Head of Adat/ Head of Village/Kelurahan made before the enactment of this Government Regulation;
- 7) Deed of transfer of land rights made by PPAT, where the land has not been recorded;
- 8) Deed of pledge of waqf or letter of pledge of waqf made before or since the implementation of Government Regulation No. 28 of 1977;
- 9) Minutes of auction made by an authorized Auction Officer, where the land has not been recorded;
- 10) Letter of appointment or purchase of land plots to replace land taken by the Government or Local Government;
- 11) Petuk Pajak Bumi or Landrente, girik, pipil, kekitir and Verponding Indonesia before the enactment of Government Regulation Number 10 of 1961;
- 12) Land history certificate that has been made by the Land and Building Tax Service Office;
- 13) Other forms of written evidence by whatever name referred to in Articles II, VI and VII of the Conversion Provisions of the UUPA. Today, the old title deeds are not evidence of rights but merely serve as the basis for the contents of the warkah for the purpose of issuing certificates.

The Indonesian verponding issued during the Dutch colonial period was not a title deed but a tax certificate issued by the competent authority. At that time the Indonesian verponding was regarded as a certificate of title that could be used to show a person's right to the land he controlled. However, the evidentiary power of the Indonesian verponding as a tax certificate at that time was not as strong as that of the grosse deed of eigendom. Likewise, land with western rights at that time such as former eigendom land was registered, so that land rights and the subject of land rights holders could be clearly known because land registration for western rights is land registration that leads to proof of rights. In practice, many people have an understanding that the old proof of rights is a proof of land rights. So that people today still use old proof of rights to carry out a legal action carried out before PPAT. Legal actions are considered valid as long as the requirements of light and cash are achieved. Before the expiration of the period determined by PP No. 18 of 2021, the community of land rights holders of former customary rights can register their land through systematic land registration for areas where a systematic land registration program is implemented by the government, namely through the Complete Systematic Land Registration Program or commonly called PTSL. Based on Article 13 paragraph (3) of Government Regulation Number 24 of 2021, in the event that a village/kelurahan has not been designated as a systematic land registration area, land registration is carried out through sporadic land registration. Furthermore, it is stated in paragraph (4) that sporadic registration is carried out at the request of interested parties.

IV. ANALYSIS

The Indonesian verponding issued during the Dutch colonial period was not a title deed but a tax certificate issued by the competent authority. At that time the Indonesian verponding was regarded as a certificate of title that could be used to show a person's right to the land he controlled. However, the evidentiary power of the Indonesian verponding as a tax certificate at that time was not as strong as that of the grosse deed of eigendom. Likewise, land with western rights at that time such as former eigendom land was registered, so that land rights and the subject of land rights holders could be clearly known because land registration for western rights is land registration that leads to proof of rights. In practice, many people have an understanding that the old proof of rights is a proof of land rights. So that people today still use old proof of rights to carry out a legal action carried out before PPAT. Legal actions are considered valid as long as the requirements of light and cash are achieved. Before the expiration of the period determined by PP No. 18 of 2021, the community of land rights holders of former customary rights can register their land through systematic land registration for areas where a systematic land registration program is implemented by the government, namely through the Complete Systematic Land Registration Program or commonly called PTSL. Based on Article 13 paragraph (3) of Government Regulation Number 24 of 2021, in the event that a village/kelurahan has not been designated as a systematic land registration area, land registration is carried out through sporadic land registration. Furthermore, it is stated in paragraph (4) that sporadic registration is carried out at the request of interested parties.

V. CONCLUSION

According to the National Land Law and its provisions, lands with customary rights have undergone conversion, so that the old title deeds no longer exist. Referring to jurisprudence related to the Fiscal Cadaster, an old title deed is not a proof of ownership of the person whose name appears on the tax certificate, but only a proof of who must pay tax. The position of the old proof of right as a proof of old rights cannot be equated with a legal certificate as a proof of rights whose land has been registered. In

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practice, the use of old evidence of rights is still used as evidence to carry out legal acts of transfer of rights, because previously the land has not been registered for the first time, so that the proof of ownership owned is only evidence of old colonial rights before the enactment of the UUPA. In land registration as evidence in the legal act of transferring rights with the old right base is accompanied by other supporting evidence in the form of a certificate, no dispute, and a certificate from the village. As long as the land has not been registered for the first time for the legal certainty of the right holder itself, the land has not been registered. So that the strength of proof against third parties is weak and the evidence of old rights is only limited to indications of land tenure. The guarantee of legal certainty of customary land rights after the enactment of Government Regulation Number 18 of 2021 concerning management rights, land rights, apartment units, and land registration is by first registering the land at the local land office. Land registration is carried out so that former customary land ownership is converted into property rights and land certificates can be issued as evidence of ownership of strong land rights based on article 19 of the UUPA. The issuance of certificates can provide a sense of security against ownership of land rights controlled. Before the end of the validity period of evidence of former customary rights, the community can register their land through land registration for the first time, namely by systematic registration for areas that are the object of systematic land registration and for areas that have not become the object of systematic registration and for areas that have not become the object of systematic registration, sporadic land registration can be carried out. After 5 years of the enactment of PP Number 18 of 2021, written evidence of old rights cannot be used as evidence but only as instructions in the context of land registration.

As a new regulation for the community, PP 18 of 2021 concerning management rights, land rights, apartment units, and land registration, it is necessary to socialize the government and the Land Office to the community, especially to areas whose land plots have not been registered to register their land before the specified period ends. The existence of overlapping rules related to land registration associated with Indonesia's current land conditions still does not solve the existing land registration problems, the existence of these rules is expected not to burden the community in registering their land in the future. To achieve land order before the specified period ends, it is necessary to procure a land registration program from the government or special counseling related to sporadic land registration in areas that have not yet become the object of systematic registration by the Land Office and related supporting apparatus such as sub-districts and village officials in order to encourage the community to actively register their land sporadically so that before the time period ends, the community has registered their land with evidence of former customary rights owned.

ACKNOWLEDGMENT

Praise and gratitude to God Almighty, because for His blessings and grace, I can complete this Journal. The writing of this journal was carried out in order to fulfill one of the requirements for applying for a lecturer position at Madura University. The author realizes that in writing this journal there are still shortcomings, for that constructive criticism and suggestions are expected to be able to perfect this journal. at the end of the word, the author would like to thank you and hopefully this journal can be useful for all parties in need.

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