INTERNATIONAL JOURNAL OF SOCIAL HEALTH
https://ijsh.ph/index.php/rp
Volume 2 Number 6 June 2023
E-ISSN: 2984-7079

STRENGTHENING LEGAL SECURITY OF LAND OWNERSHIP BASED ON GIRIK AND VILLAGE HEAD LAND CERTIFICATE

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KEYWORDS
legal certainty, certificate, certificate of land, girik.

ABSTRACT
In addition to statutory regulations, legal certainty in the land sector requires the implementation of land registration, resulting in a land certificate containing juridical and physical data. In practice, the legal certainty of land ownership still needs to be clarified for landowners, especially regarding the strength of certificate proof. The reason is that in a dispute in court, it is not certain that the court declares a certified land owner as the land owner. Several court decisions state that those who are entitled are not the certificate holders but those who control the land based on a Land Certificate or based on a Girik. The formulation of the first research problem, how is the legal certainty of land ownership based on a certificate? Second, how to strengthen the legal certainty of land ownership based on girik and village head certificates? The research objective is to provide an overview of the legal certainty of land ownership based on certificates and to strengthen the legal certainty of land ownership based on girik and village head certificates. The research method used in achieving these goals is of a normative type, descriptive nature, secondary data is analyzed qualitatively, and conclusions are drawn using deductive logic. Legal certainty of land ownership is manifested as a certificate as a letter of strong evidence. As a requirement for land certification, it is necessary to strengthen legal certainty regarding girik and Village Head Land Certificates.

DOI: 10.58860/ijsh.v2i6.61

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INTRODUCTION

There are still many land disputes, one of which is that one plot of land becomes the object of dispute between two parties claiming rights over the land. The Ministry of Agrarian Affairs and Spatial Planning/National Land Agency noted that there were 8,625 cases of land disputes and conflicts between 2018 and 2020. Of these, 63.5% have been resolved, so 5,470 land disputes and conflicts have been resolved (Yanita Petriella, 2020). One of the efforts made is through asset legalization or land registration to avoid land disputes. This land registration must be seen as an effort to formalize land status to be used as capital in a formal economic system. The Government is carrying out land registration throughout Indonesia, with a target that by 2025, all land for various purposes will be registered. Although not all land has been successfully registered, because only a portion of the land has been registered, the national land law through Law Number 5 of 1960 concerning Basic Agrarian Regulations has stated that land certificates are proof of rights that apply as a powerful means of proof. That is, the information regarding the physical and juridical data in the certificate can be trusted as long as no other party can prove the contrary.

In contrast to Australia, the Torrens system, applied in land registration, produces evidence of land ownership that no one can contest. In this case, the state guarantees the correctness of the data presented (Boedi Harsono, 2018). If it turns out that there is an actual owner of the land, then the actual

owner will be given compensation through an insurance fund. It is no longer possible to change the land book. Apart from Australia, the Torrens system is also implemented in New Zealand, Canada, Algeria, Tunisia, Congo, Spain, Norway, Jamaica, and the United States (Reid, 2020). In addition, several Asian countries, such as the Philippines, India, Malaysia, and Singapore.

In Indonesia, there are known proofs of land ownership other than certificates, including Girik, Kekitir, Indonesian Verponding, European Verponding, Land Certificates (SKT), and Inheritance Certificates. Several studies have shown that Girik and Land Certificates have the legal power to serve as evidence of land ownership and as the basis for buying and selling land objects (Adani & Arsin, 2022). However, partially, the legality of the Land Certificate is still in doubt because, in some areas, sometimes it is not signed by the competent authority. After all, it is only signed by the Traditional Leader (Lund & Rachman, 2017). Apart from the certificate of land, whose validity is doubtful, the girik is also not necessarily issued by the competent authority.

The Village Head's SKT is not equivalent to a land certificate and is only a complement in land registration activities to obtain a land certificate. However, the community accepts and recognizes SKT to prove land ownership and control. There is an interesting phenomenon that in various court decisions when a plot of land is contested by two parties, where one party has a land certificate as the most powerful means of proof, and the other hand only has an SKT; the judge does not always decide that the owner of the land is the holder of the certificate. This is also the case with land tenure based on Eirik, which is often won by the holder in a lawsuit in court.

METHODS

This study aims to describe the strengthening of legal certainty of land ownership based on girik and SKT through a statute approach and a conceptual approach as well as a case approach based on decisions of the Judiciary (cases approach), consisting of court decisions. The research method used in achieving these objectives, this research is of a normative type, descriptive; the secondary data obtained is processed and analyzed by the researcher. Processing and analysis of research data use qualitative analysis methods, where data validation is carried out by triangulation, namely data validity checking techniques that utilize something else. Beyond the data for checking purposes or as a comparison against that data, meaning through triangulation techniques, it is necessary to check through other sources. They are concluding using deductive logic, namely a way of concluding from general to specific matters obtained after examining problems related to strengthening legal certainty of land ownership based on the Village Head's Girik and SKT.

RESULTS AND DISCUSSION

Legal Certainty of Land Ownership Based on Certificates

Law and society are two things that are interrelated because the law is important in society, primarily to create order and peace (Atmadja & Gede, 2013). According to Friedrich Carl von Savigny, laws are not made but grow and live in a society (Aulia, 2020). In John Austin's thought, as a positivist follower, the law is an order from a sovereign party. So legal law is law regulated by the state, which is coercive and must be obeyed by the community.

Gustav Radbruch argued three basic legal values: justice, legal certainty, and fairness (Julyano & Sulistyawan, 2019). Following its function, the law aims to regulate the peaceful association of life by creating an orderly social order, creating order, and creating balance. Legal certainty must be maintained for the sake of order in a country. Therefore, positive laws that regulate human interests in society must always be obeyed, even though positive laws are unfair or do not achieve the law's goals (National, n.d.). The existence of legal certainty makes the implementation of law consistent in a social

process so that a reasonable standard is obtained and people's life can take place in an orderly, peaceful, and fair manner.

In English, land is defined as the earth's surface, which means the earth's surface. UUPA regulates the surface of the earth as part of the earth, in addition to the body of the earth. According to the BAL, rights to the earth's surface are land rights that can be given to and owned by people or persons and legal entities (Ramadhani, 2018). These land rights are property rights, business use rights, building use rights, and usage rights (Winanti & Agustanti, 2020). These land rights give authority to the holder of the right to use a plot of land, including the body of the earth and the space above it, as long as it does not conflict with statutory provisions.

Legal certainty in the land sector is obtained through (1) complete, clear, and consistently implemented laws and regulations and (2) implementation of land registration (Koswara, 2016). Through statutory regulations, various matters related to understanding various types of land rights, land acquisition, rights and obligations of landowners, and others can be identified. Through land registration, juridical and physical data can be obtained from a plot of land, which is the basis for carrying out a certain legal action against a plot of land.

Article 19, paragraph (1) of the UUPA states that to guarantee legal certainty by the Government, land registration is held throughout the territory of the Republic of Indonesia according to the provisions stipulated by Government Regulations (Muljono, 2016). This article contains meaning that (1) land registration carried out by the Government aims to provide guarantees of legal certainty and certainty of rights; (2) land registration is carried out according to government regulations. The guarantee of legal certainty (rechtskadaster) and certainty of rights provides a sense of security for land rights holders. It makes it easier for them to prove land ownership. In addition, land registration makes juridical and physical data compiled in a Land Book stored at the Land Office, making it easier for interested parties (potential buyers or potential creditors) to obtain information about the registered juridical data and biological data.

Government Regulation Number 10 of 1961 concerning Land Registration is the basis for implementing land registration which began on September 24, 1961. This provision states that the agency conducting land registration is the Bureau of Land Registration. In Article 13, paragraph (3), it is stated that the letter of proof of Land rights that are registered are called certificates, namely copies of land books and measurement documents bound together with a cover paper whose shape is determined by the Minister of Agrarian Affairs.

Government Regulation Number 10 of 1961 was replaced by Government Regulation 24 of 1997 concerning Land Registration, issued on July 8, 1997, and implemented on October 8, 1997 (No. 24 CE). This regulation is supplemented by the Regulation of the State Minister for 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 (Ardani, 2019). According to this provision, the implementing agency for land registration is the National Land Agency (now the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency). At the same time, the executor is the Land Office of the National Land Agency (now the Land Office of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency) Administrative City/Regency. On February 2, 2021, Government Regulation Number 18 of 2021 (State Gazette of the Republic of Indonesia Year 2021 Number 28) was issued concerning Management Rights, Land Rights, Flats Units, and Land Registration. Matters related to land registration are regulated in articles 84-99.

Land registration to ensure legal certainty consists of first-time land registration activities, which can be carried out systematically (government initiatives), sporadically (landowner initiatives), and land registration in the context of maintaining juridical data and physical data (Putra et al., 2021). It is

mentioned first because what is registered is land that has never been registered before, according to Government Regulation Number 10 of 1961. Meanwhile, registration in the context of data maintenance is carried out every time there is a change in subject matter, rights, and land so that juridical data and biological data are data up-to-date.

Land registration for the first time includes activities of (1) collecting and processing physical data; (2) collection and processing of juridical data as well as bookkeeping of rights; (3) certificate issuance; (4) presentation of physical data and juridical data; (5) storage of general lists and documents (Sahono, 2012). The collection and processing of biological data are carried out by measuring and mapping, which include (1) determining the location of the land; (2) making a base map for registration; (3) delimitation of land parcels (by way of contradictory delimitation), followed by the installation of boundary signs; (4) measurement and mapping of land parcels and preparation of registration maps; making a land register; making measurement letters (Yunian, 2017). The data collected as a result of physical activities are (1) the location of the land; (2) land boundaries; (3) the area of land, and (4) the presence/absence of buildings and plants on the plot of land in question. The result of this physical activity is a Registration Map if all plots of land in a village are registered, a Letter of Measurement for one particular plot of land in the village concerned.

The collection of juridical data is obtained through examination and examination of existing evidence of rights, including (1) written evidence, in the form of a letter showing ownership; (2) witness testimony; (3) a signed statement of land ownership; (4) physical mastery (Nadzir, 2017). The data collected from juridical activities is the name of the right holder, the type of land rights, and whether or not other rights burden them. This juridical activity results in issuing a Land Book, which is kept at the Land Office, and a Certificate given to the land owner. The District/City Land Office issues certificates. Whereas the official who signs the certificate (1) In systematic land registration, the certificate is signed by the Head of the Adjudication Committee on behalf of the Head of the Regency/City Land Office; (2) In sporadic land registration, that is individual, the certificate is signed by the Head of the Regency/Municipal Land Office; (3) In sporadic mass registration of land, the certificate is signed by the Head of the Land Measurement and Registration Section on behalf of the Head of the Regency/City Land Office (Budi Harsono, 2007). The strength of certificate proof is regulated in Article 19 paragraph (2) letter c, which states that the provision of letters of proof of rights is valid as a strong means of proof. Likewise, Article 23 paragraph (2), 32 paragraph (2), and Article 38 paragraph (2) of the UUPA essentially state that the final result of land registration is a certificate of proof of title that applies as a powerful means of proof.

In addition, also in Article 32 paragraph (1) Government Regulation Number 24 of 1997 states: A certificate is a letter of proof of rights that applies as a strong means of proof regarding the physical data and juridical data contained therein, as long as the physical data and juridical data. This follows the data in the measurement letter and the concerned land title book (Nae, 2013).

That is, as long as it cannot be proven otherwise, the physical data and juridical data contained therein must be accepted as true data. Of course, the physical data and juridical data listed in the certificate must match the data listed in the land book and measurement certificate concerned because the data is taken from the land book and measurement certificate.

The strength of this certificate is based on the publication system adopted by Indonesia, which is negative with positive tendencies. This is as contained in the General Explanation of Government Regulation Number 24 of 1997 which states: In this Government Regulation which perfects Government Regulation Number 10 of 1961, the objectives and systems used are maintained, which in essence have been stipulated in the Basic Agrarian Law (UUPA).), namely that land registration is carried out in the framework of providing guarantees of legal certainty in the field of land and that the

publication system is a negative system, but one that contains positive elements because it will produce letters of evidence of rights which are valid as a strong evidentiary tool. This statement implies that the Government as the organizer of land registration, must make every effort so that, as far as possible, the correct data can be presented in the land book and registration map. (Boedi Harsono, 2018)

The certificate is only a letter of proof that is strong and is not a letter of proof that is absolute. This right means that the biological data and juridical data contained in the certificate have legal force and must be accepted by the judge as true information as long as and as long as there is no other evidence proving otherwise. Thus, the court has the authority to decide which evidence is correct, and if the certificate is not correct, changes and corrections are made accordingly.

In a negative publication system, it is not the registration but the legality of the legal action being taken that determines the transfer of the legal action being carried out. Registration does not make people who acquire land from unauthorized parties become new rights holders. In this system, a principle known as Nemo plus juris applies. This principle comes from Roman law, which reads Nemo plus juris in alium transferre potest quam ipse habet, which means that a person cannot surrender or transfer rights beyond what he has. Therefore, the data presented in the registration with a negative publication system cannot be trusted for granted. The state does not guarantee the correctness of the data presented (Boedi Harsono, 2018)

From this description, it can be seen that the negative publication system, including the one with positive tendencies, has weaknesses; namely, people who own land based on a certificate are faced with the possibility of being sued, resulting in the loss of their land. In countries that adhere to a purely negative publication system, this weakness is overcome by an acquisitive perjuring or adverse possession institution. The National Land Law uses the basis of Customary Law, namely rechtsverwerking.

According to customary law, if a person, for several years, lets his land go uncultivated, then the land is worked on by another person who obtained it in good faith. He is deemed to have relinquished his rights to the plot of land in question and therefore loses his right to claim the land back (Boedi Harsono, 2018).

Landowners who have been certified obtain legal protection as stated in Article 32 paragraph (2) of Government Regulation Number 24 of 1997: "If a land parcel has been legally issued a certificate in the name of a person or legal entity who acquired the land in good faith and controls it, the party who feels that he has the right to this land can no longer demand the implementation of said right if within five years of the issuance of the certificate does not submit a written objection to the certificate holder and the Head of the Land Office concerned or does not file a lawsuit in court regarding ownership of the land or the issuance of said certificate" (Budhayati, 2018). The purpose of this provision is, on the one hand, to stick to the negative publication system and, on the other hand, to provide legal certainty in a balanced manner to parties who, in good faith, control a plot of land and are registered as rights holders in the land book, with a certificate as evidence, which According to the UUPA, it is valid as a powerful means of proof. Strengthening Legal Certainty for Land Ownership Based on Girik and Letter of Village Head

The land law that prevailed in Indonesia during the colonial era was pluralism, with two main types of land law: Western land law and customary land law. In addition to these two, there are Administrative Land Law, Swapraja Land Law, and Inter-Group Land Law. Land has its own thing, the law that applies to land parcels, regardless of the law that applies to the right holder. Customary lands are subject to the provisions of customary law regardless of who is the right holder, and Western lands are subject to the provisions of Western law regardless of who is the right holder. This is known as the Intergentiele Grondenregel principle.

The dualism of Land Law brings consequences to individual rights to land. According to Western Land Law, individual land rights consist of land rights, namely Eigendom Rights, Erfpacht Rights, Opstal Rights, and collateral rights over land, namely Hypotheek Rights. According to Customary Land Law, individual land rights consist of land rights, namely Indonesian lands (Customary et al. with all names in each region) and Credietverbad Rights (as collateral rights over land created by the Dutch East Indies Government).

Eigendom rights, Erfpacht rights, and Opstal rights have been registered under the provisions of Overschrijvings Ordonantie S 1834 Number 27, with proof of deed ownership. This means that it is easy for the land owner to prove his ownership based on a deed which, besides proving the occurrence of certain legal actions, also his ownership. The lands with Western rights are also subject to a land tax called European Verponding.

Meanwhile, Indonesian rights lands or customary lands have never been registered, so they do not have a letter of proof of title. However, these lands with Indonesian rights are subject to tax. For Indonesian land rights located in the mentee area, a tax called laundrette tax (laundrette) is imposed, with different names in each area, such as Eirik, kefir, and Pipil.

The regulations in force at that time determined that the object of tax depended on the status of the land, and the taxpayer was the land owner. The Land Tax Petuk is used as a guide for land ownership by Indonesians with customary rights in various places in Indonesia.

Since the issuance of the UUPA on September 24, 1960, the National Land Law is the only land law that regulates tenure rights over land throughout the territory of the Unitary State of the Republic of Indonesia, the main provisions of which are the UUPA and are supplemented by various implementing regulations. This National Land Law was compiled based on unwritten conceptions, principles, institutions, and the Customary Law system.

The concept of Customary Law, which is the main source for the formation of National Land Law, is Religious Communalism and is formulated as a philosophy that allows control of parts of land together as a gift from God Almighty by individual citizens with land rights that are both private and contain elements of togetherness. Religious communalistic legal relations within the realm of customary law thought, known in the legislation as customary rights, are elevated by the National Land Law at the national level to become legal relations between the Indonesian nation and all land throughout the country's territory as common land, which is adjusted to current and future developments in national and societal conditions and needs (Boedi Harsono, 2018). It is called a communalistic relationship to show the nature of the legal relationship between the Indonesian nation and all land in all areas of the country as common land. Religious character shows belief and acknowledgment that the shared land is a gift from God Almighty (Sihombing, 2013).

The Conversion Provisions in Dictum II of the UUPA regulate the conversion of individual rights to land. Article II paragraph (1) of the UUPA Conversion Provisions states: Land rights that give the authority as or are similar to the rights referred to in Article 20 paragraph 1 as referred to by the name below, which exist at the time this law comes into force, namely: rights to agrarisch eigendom, property, Hasan, andarbeni, rights to drive, rights to village drive, pesini, grant Sultan, landerinjbezitrecht, altijddurende refract, business rights to former private land and other rights under any name which will be further emphasized continued by the Minister of Agrarian Affairs, since the entry into force of this law it becomes the property rights referred to in Article 20 paragraph (1), except if those who own them do not meet the requirements as stated in Article 21.

Given that there are still many lands that have not been certified, especially land that used to be customary land, where the owner's instructions are girls, in practice, the owner of the former land with customary ownership has not been certified, has asked the Village Head to provide an SKT explaining

that the person who has referred to in the letter is the land owner who resides at the location of the land. This letter only explains the physical control over the land, not the juridical control. However, this Girik and Land Certificate are used as the basis for rights in first-time land registration. This is an explanation of the history of the land, who physically controls the land, and its boundaries when the applicant for registration does not have or does not have complete proof of ownership (Thalib, 2019).

In practice, several studies regard Girik as proof of land ownership. Supreme Court decision No. 1723K/Pdt/2010 ruled that land tax or girik certificates are the only initial evidence to obtain juridical evidence of land rights, namely certificates. Supreme Court Decision No. 125 PK/Pdt/2002 states that Eirik is written evidence for land that still needs certification. Several studies suggest that the village head made an SKT (Wijayanti, 2017).

In land disputes that are resolved through the courts due to overlapping land ownership, the certificate owner needs to know clearly and with certainty the location of the land and land boundaries, as well as the physical condition of the land. Whereas the SKT holder can explain and know the certainty of the location of the land, boundaries, and physical conditions so that the Court Decision gives the land to the holder of the Land Certificate (Sulistyoningsih, 2015). This is similar to research that states that the SKT issued by the Camat can be physical evidence of land ownership (Ginting, 2017).

Other research suggests that SKT is used as a condition for land certification, but through the Circular of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 1756/15. I/IV/2016 concerning Guidelines for Implementation of Community Land Registration, the requirement for SKT in land certification has been removed (Akbar, 2017). This, of course, will change the mechanism of the land certification process. According to the Regulation of the State Minister for Agrarian Affairs Number 3 of 1997, the applicant only needs a physical declaration of land parcels. This letter has almost the same characteristics as SKT.

Apart from using SKT in practice, there are weaknesses in land ownership based on SKT due to the lack of order in land administration at the village level. This research reveals the importance of strengthening the legal certainty of land ownership based on the SKT issued by the village head. This is necessary because many lands in Indonesia have not been certified, especially land that was formerly customary property. Hence, landowners need written evidence that can be used as information regarding land ownership.

Girik functions as a letter of imposition and payment of taxes which among the people is considered and treated as proof of ownership of the land in question. The issuance of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats Units, and Girik Land Registration can be used as evidence of land ownership with a time limit. Article 96, paragraph (1) of Government Regulation Number 18 of 2021 stipulates that a former customary-owned land that has written evidence owned by an individual must register the land by five years after the regulation came into effect. Then further in Article 96 paragraph (2), it is determined that if the five-year period has ended, the written evidence of former customary-owned land is no longer valid and cannot be used as evidence of land rights and is only a guide in the land registration process.

Even though, according to the provisions, SKT is no longer a requirement in land certificates, in practice, SKT is still considered proof of physical land ownership. Therefore it is necessary to strengthen the legal certainty of SKT through legalization by the official authorized to issue the SKT, likewise with Eirik. In order to avoid the existence of fake girls, as an indication of land ownership, in the event of a land certificate, it is necessary to legalize the girl that has been issued by the official who issued it.

CONCLUSION

Based on Article 19 paragraph (2) letter c of the UUPA, a certificate is issued as strong proof of land ownership to guarantee legal certainty and certainty of rights. The publication system adopted by Indonesia is negative with positive tendencies. Even though the Government does not guarantee the correctness of juridical data and biological data presented in land books, registration maps, and certificates, the Government, as the organizer of land registration, must make every effort so that as far as possible, the correct data can be presented in land books, registration maps, and certificates. To overcome the weaknesses of this publication system, the rechtsverwerking institution is used, which is contained in Article 32, paragraph (2) PP Number 24 of 1997. Girik and SKT are proof of physical ownership of land that has yet to be certified and are used as a guide for land ownership to be certified. According to the Circular of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 1756/15. I/IV/2016 concerning Guidelines for Implementing Community Land Registration, the SKT requirement in land certification has been removed. Meanwhile, according to Article 96 paragraphs (1) and (2) PP Number 18 of 2021, it is given five years to use girik as written evidence of former customary land; if the period has passed, the girik and other documents cannot be used as evidence of land rights and are only a guide in the land registration process. Strengthening the legal certainty of land ownership based on Girik and Village Head's SKT and as a guide in the land registration process needs to be done through legalization by the official who issued it.

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