

## LEGAL CONSEQUENCES OF OWNERSHIP OF UNREGISTERED LAND RIGHTS FROM THE PERSPECTIVE OF POSITIVE LAW

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Received 28 Feb 2025 • Revised 18 May 2025 • Accepted 19 May 2025

### Abstract

The land registration process throughout Indonesia has not been fully completed, this phenomenon is influenced by the lack of public awareness in registering their land. Although the government has set a target to achieve comprehensive land registration through the Complete Systematic Land Registration Program (PTSL), the purpose of this study is to determine the legal consequences of not registering land rights in Indonesia and legal certainty in land registration. In this study, the method of accessing and researching takes a lot from library materials, namely materials containing new or up-to-date scientific knowledge, or new understandings of known facts or ideas, in this case including books, journals, dissertations or theses and other legal materials. The legal consequences of not registering land rights in Indonesia in the form of certificates can have significant implications for legal certainty and protection of landowner rights. Land registration is an important step to ensure legal certainty, where land title certificates serve as strong evidence of ownership. Without registration, landowners are at risk of legal uncertainty, which can result in land disputes and difficulties in conducting other legal transactions. The results of the implementation and execution of electronic land registration as referred to in paragraph (1) are in the form of data, electronic information, and/or electronic documents. That in the process of implementing land registration with Government Regulation Number 24 of 1997 concerning Land Registration states that land registration is a series of activities carried out by the Government continuously, sustainably and regularly.

**Keywords:** Legal Effects, Land Registration, Positive Law

## INTRODUCTION

Every individual has the right to equal treatment before the law, recognition, guarantees, protection, and assurance of a fair law, according to Article 28 D, paragraph (1) of the 1945 Constitution (Constitution of the Republic of Indonesia 1945.). The government's power to regulate the land sector is affirmed in Article 3 Paragraph (3) of the 1945 Constitution, which also states that the state controls the land, water, and natural resources found therein for the benefit of the populace. This was subsequently reaffirmed in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (LN 1960-104), also referred to as the Basic Agrarian Law (UUPA). This is evident in a number of government laws, presidential decrees, presidential rules, and rules issued by the heads of land-related technical agencies. Hadisiswati (2014).

At first, land registration was conducted in accordance with the guidelines set out in GR 10/1961. However, a number of issues, including a lack of funding and personnel, make this PP subpar. There is insufficient evidence to sustain this outcome in the majority of land tenure cases. Furthermore, this government regulation is insufficient to enable the prompt and successful implementation of land registration. There is no time restriction on land registration after the transfer of rights. Furthermore, the property is often unregistered since the property Deed Official is not required to register and may also be the new owner of the land rights. A new land registration legislation was released to address this shortcoming and enhance the old one (Aprini, 2007). The foundation of land registration is outlined in Article 19 of UUPA, paragraph (1), which states that the government conducts land registration throughout the Republic of Indonesia in compliance with government regulations in order to obtain legal certainty. Additionally, paragraph (2) outlines the series of land registration procedures, which include measurement, mapping, land bookkeeping, registration of land rights and the transfer of such rights, as well as the provision of proof of rights that will be considered authentic evidence (Basic Agrarian Law No.5 of 1960, 1960).

Through the land registration process, individuals holding registered land rights are issued certificates, which serve as official proof of ownership. These documents contain essential physical and legal details about a registered land parcel, as stipulated in GR 24/1997 (Parhi & Kumar, 1997). Furthermore, the enactment of Law No. 11 of 2020 on Job Creation in Indonesia has significantly influenced various legal domains, particularly those governing land administration and regulation.

As a guarantee of certainty and legal protection of land ownership, land registration is generally acknowledged as one of the methods to address the issues of land ownership, utilization, and use. However, without public legal knowledge for active involvement in land registration, the land registration system will not operate as intended. The term "community legal awareness" describes how people and organizations comprehend their rights, duties, and responsibilities in relation to property law, particularly land registration. This entails being aware of the processes involved in land registration, appreciating the value of legitimate property ownership, and being alert of any fraudulent or unlawful land-related activities.

Due to a lack of public knowledge on land registration, the land registration procedure has not yet been completed in all areas of Indonesia. Despite this, the government has set a goal to finish the finish Systematic Land Registration Program (PTSL) by 2025 in order to accomplish comprehensive land registration (Kurniawan et al., 2018; Nurcahyo et al., 2019; Prayogo et al., 2019). Notwithstanding the regulations governing land ownership, issues still arise with regard to who owns a piece of land, such as a piece of property that has been in the control of a legal entity for a long time and has a certificate attached to it. The land is still the subject of claims from outside parties.

Based on the background information provided, the researchers developed the problem statement, "What are the Legal Consequences of Ownership of Unregistered Land Rights from the Perspective of Positive Law?" and "

The purpose of this study is to determine the legal consequences of unregistered land ownership rights from a positive legal perspective and the legal regulations for land rights registration from a positive legal perspective.

The difference between this study and other studies is that the legal consequences of not registering land rights in Indonesia are a complex issue and affect legal certainty and security of investing in the land sector. Land registration in Indonesia is regulated in the Basic Agrarian Law (UUPA) No. 5 of 1960, which emphasizes the importance of legal certainty in land ownership to protect community rights.

## RESEARCH METHOD

The majority of the research resources used in this study were obtained from libraries; these materials include books, journals, dissertations, theses, and other legal publications, as well as items that include up-to-date or current scientific information or new insights into recognized facts or

concepts. Both primary and secondary legal sources are thoroughly used in this normative legal study (Johan Nasution, 2008).

## RESULTS AND DISCUSSION

### Legal Effects of Unregistered Land Rights Ownership from the Perspective of Positive Law

Possession of land rights certificates is crucial for protecting people's land rights and achieving the goal of the Basic Agrarian Law's creation, which is to provide the framework for legal certainty. Land registration is set up to achieve legal clarity. Land registration is carried out by the government throughout the Republic of Indonesia in accordance with the provisions specified in Government Regulations to ensure legal certainty, as stated in Article 19 paragraph (1) of the Basic Agrarian Law (UUPA). Additionally, paragraph (2) emphasizes the importance of measuring, mapping, and bookkeeping land, registering land rights, and transferring these rights, as well as providing proof of rights that apply as strong evidence through a series of land registrations (Harsono, 2011).

Article 506 of the Civil Code regulates immovable property, including land (Civil Code, 1937). According to Jan Michiel Otto in Adrian Sutendi's book, legal certainty must meet the following requirements: that the rule of law be clear and consistent; that it be applied consistently, subject to, and obedient to it in government agencies; that the community adapt its habits to the rule of law; and that judges be independent, impartial, and apply the rule of law consistently and observantly in resolving legal disputes and court decisions concretely (Sutedi, 2011). In certain cases, legal certainty may be ascertained from the legislation. Before beginning a lawsuit, parties seeking justice want to know how the law applies in a certain circumstance or topic. Accordingly, legal security entails shielding the parties from the judge's capriciousness (Soerodjo, 2003). A certificate is a written declaration that belongs to a person who has been given permission to use it as evidence. According to paragraph (1) of Article 19 of the UUPA, the government registers land throughout the Republic of Indonesia in compliance with government regulations in order to obtain legal certainty. Paragraph (2) of the UUPA outlines the various steps involved in land registration, including measurement, mapping, bookkeeping, registration of land rights and transfers of these rights, and the provision of proof of rights that are legitimate as authentic evidence (Basic Agrarian Law No.5 of 1960, 1960).

In Indonesia, failing to register land rights in the form of certificates may have serious legal consequence for both legal clarity and the defense of landowners' rights. With land title certificates acting as solid proof of ownership, land registration is a crucial step in guaranteeing legal certainty. Landowners who fail to register run the danger of experiencing legal ambiguity, which may lead to land disputes and make it more difficult to carry out other legal transactions (Taolin et al., 2024; Bur & Apriani, 2017; Rajab et al., 2020). The existence of legal ambiguity for new rights holders is one of the primary effects of not registering land rights. This is because land rights cannot be legally proven without registration, which makes it difficult for owners to prove their ownership in court or in the event of a dispute (Taolin et al., 2024; Mallo et al., 2023; Rajab et al., 2020). This uncertainty can also result in irregularities in land administration, which can worsen the legal situation and increase the likelihood of land disputes (Taolin et al., 2024; Haikal et al., 2023; Armin et al., 2023).

The issuance of certificates subsequent to property registration guarantees the landowner's legal rights, and certificate holders may readily demonstrate their ownership status in the case of a dispute (Rehas, 2017; Rajab et al., 2020; Mallo et al., 2023). Without one, landowners may not have the legal authority to defend their rights, leaving them open to arbitrary action by others (Andryawan et al., 2024; Gayatri et al., 2021). The lack of land rights registration, however, is partly influenced by the general public's lack of legal knowledge on the significance of land rights registration. Thus, efforts to increase public awareness about the significance of land registration are required to prevent disputes and ensure legal certainty in the land sector (Siregar et al., 2024; Haikal et al., 2023; Novia & Latumeten, 2023). This phenomenon is exacerbated by a lack of socialization, education, and information on land registration procedures, which can make the legal situation regarding land ownership worse (Taolin et al., 2024; Siregar et al., 2024; Haikal et al., 2023). In general, landowners who fail to register their property rights may face a number of unfavorable legal repercussions, such as ambiguity in the law, trouble establishing title, and possible litigation. In order to safeguard landowners' rights and provide legal certainty in society, land registration should be seen as an essential first step.

As a result of the UUPA's directive that one of the goals of Law No.5 of 1960 concerning UUPA be to give legal certainty for the land rights of the Indonesian people, the institution of land registration itself only occurred in 1960 with the enactment of Government Regulation No.10 of 1961 regulating Land Registration (GR 10/1961). A land certificate is a document that certifies ownership rights over land as the end product of the land registration process. As stated in Article 19 of the UUPA, the government, as the highest authority, is required to perform resistant registration in order to give

landowners legal certainty regarding their location, boundaries, and land area, as well as their land status, the objects they are entitled to, and the provision of certificates as proof of their rights (M. Abdurrachman, 2008: 23).

### Legal Arrangement of Land Rights Registration in Positive Law Perspective

The goal of land registration is to provide land rights holders legal protection and clarity. Laws, topics, and objects pertaining to legal construction make up legal certainty. Article 3 of GR No. 24 of 1997 and Article 19 paragraph (1) of the UUPA both make reference to this (Budhayati, 2018):

- a. *measurement, mapping and bookkeeping of land;*
- b. *registration of land rights and transfer of such rights;*
- c. *providing letters of evidence of rights, which shall serve as strong evidentiary instruments.*

UUPA No. 5 Year 1996's Article 19 governs the primary provisions pertaining to land registration, as follows:

- (1) *"To ensure legal certainty, the Government shall carry out land registration throughout the territory of the Republic of Indonesia according to the provisions regulated by Government Regulation.*
- (2) *The registration mentioned in paragraph 1 of this article includes:*
- (3) *The registration of land shall be carried out in view of the situation of the State and society, the needs of the socio-economic traffic and the possibility of its implementation, according to the considerations of the Minister of Agrarian Affairs.*
- (4) *In a Government Regulation, the fees related to the registration referred to in paragraph 1 above shall be regulated, provided that people who are incapable shall be exempted from paying such fees."*

Ministry of ATR/BPN enacted Permen ATR/BPN No. 01 of 2021 about Electronic Certificates on January 12, 2021, during the pandemic in 2021. This document is known to as the Electronic Certificate Permen. Increased efficacy and efficiency in delivering quality land services, both in terms of service length and other aspects like cost reduction, are anticipated outcomes of the Electronic Certificate Permen requirement. Regarding the degree of correctness of physical and legal facts in electronic format, offering a guarantee of legal certainty and security of legal protection at a higher level than the issue of written proof documents.

As a result of the Electronic Certificate Regulation, land certificates are now digital, or electronic. This is a new development from the government, and it should be valued given the many land-related issues. The implementation of electronic certificates, modifications to electronic land rights derived from deeds, simplification of the validation process of transfer of rights (improvement of EoDB), and the One Step Service Office (application for granting rights and issuing certificates) are all examples of the actualization of the "Grand Design Modernization of Land Services in 2021-2022" stage 3 (fully digital).

Traditional land certificates remain valid legal proof of land ownership and hold the same legal standing as electronic certificates. Both types of certificates serve identical purposes, as stipulated in GR 18/2021 concerning Land Rights, Management Rights, Flat Housing Units, and Land Registration (Sahnan, 2016:16). This regulation aligns with the provisions set forth in Article 142 and Article 185(b) of Law No. 11 of 2020 on Job Creation. Furthermore, Article 84 of GR 18/2021 asserts that electronic data, information, and their printed copies, as referenced in paragraph (3), constitute an extension of legal evidence in accordance with Indonesia's procedural law. The outcome of electronic land registration planning and implementation, as outlined in paragraph (1), includes data, electronic records, and digital documents.

According to GR 24/1997 on Land Registration, land registration is an ongoing, systematic, and structured process conducted by the government. This process encompasses the collection, processing, record-keeping, presentation, and maintenance of both legal and physical data concerning land parcels and apartment units in the form of maps and records. Additionally, it includes the issuance of ownership rights for apartment units, proof of land rights for registered parcels, and the recognition of any encumbrances affecting them (Samun Ismaya, 2011:10).

To obtain an electronic land certificate, reference must be made to Minister of Agrarian Affairs and Spatial Planning Regulation No. 1 of 2021 on Electronic Certificates. As outlined in the description above, electronic certificates serve as strong legal evidence under Indonesia's land registration framework. Although their implementation is not mandatory, it is considered essential for preventing document forgery. The issuance process, in accordance with this regulation, begins with the initial issuance of electronic certificates and is followed by the conversion of conventional certificates into electronic ones.

One of the most significant legal consequences of unregistered land rights is the loss of legal certainty. Unregistered land has the potential to cause land disputes, as explained in a study showing that the land that is the object of the dispute is land that does not yet have an ownership certificate Amaliyah et al. (2021). This uncertainty also affects landowners who may not be able to exercise their rights optimally, due to the threat of claims from other parties who may also claim to be the owner.

Furthermore, the results of the study show that the phenomenon of making double certificates can arise among lands that are not clearly registered. Research on the legal certainty of issuing duplicate certificates reveals that many legal problems arise due to the issuance of duplicate certificates which not only confuse landowners but also have the potential to cause disputes (Anggraeni et al., 2023; . In other words, lack of registration can create space for corrupt practices and legal manipulation that will harm legitimate land rights owners.

From an economic perspective, unregistered land rights result in hampered landowners' access to financial resources, such as credit. Registered land is often used as collateral in the loan application process. Research shows that land title certificates contribute significantly to improving people's welfare and creating new sources of people's prosperity, while unregistered land cannot be used optimally (Hidayati & Adinegoro, 2022). This worsens the economic conditions of landowners, where they do not get proper access to funds that might improve their welfare.

In a social context, the legal impact of unregistered land rights is also seen in the aspect of protecting community rights. Without registration, indigenous peoples and minority groups often lose their rights to land that they have managed for generations (Suwitra, 2020). Registration provides official recognition of their rights and prevents exploitation by parties seeking to claim the land.

Other studies emphasize that registration carried out systematically and completely helps reduce the number of land disputes and provides legal guarantees to owners and certificate holders (Ayu, 2020). Therefore, it is important for the government to continue strengthening land registration programs such as Complete Systematic Land Registration (PTSL) to ensure that every land right can be accommodated and officially recognized Haikal et al. (2023).

Considering all of the above aspects, it is clear that the unregistered land rights in Indonesia not only cause legal problems and disputes, but also have a negative impact on the social and economic aspects of the community. Therefore, there needs to be an effort to increase legal awareness among the community about the importance of land registration, as well as improvements in the implementation of registration so that it can be more effective and efficient in ensuring legal certainty.

## CONCLUSION

In Indonesia, failing to register land rights in the form of certificates may have serious legal repercussions for both legal clarity and the defense of landowners' rights. With land title certificates acting as solid proof of ownership, land registration is a crucial step in guaranteeing legal certainty. Landowners who choose not to register run the danger of experiencing legal ambiguity, which may lead to land disputes and make it more difficult to carry out other legal transactions.

The regulation of this matter is outlined in GR 18/2021 concerning Land Rights, Management Rights, Flat Units, and Land Registration (Sahanan, 2016:16). This regulation serves as a continuation of the provisions established in Article 142 and Article 185(b) of Law No. 11 of 2020 on Job Creation. Article 84 of GR 18/2021 stipulates that electronic data, information, and their printed copies, as referenced in paragraph (3), serve as an extension of legal evidence in accordance with Indonesia's procedural law. The outcomes of electronic land registration planning and implementation, as outlined in paragraph (1), take the form of data, electronic records, and digital documents. In accordance with GR 24/1997 on Land Registration, land registration involves a series of systematic, continuous, and organized activities carried out by the government, encompassing the collection, processing, record-keeping, presentation, and maintenance of both physical and legal data.

Considering all of the above aspects, it is clear that the unregistered land rights in Indonesia not only cause legal problems and disputes, but also have a negative impact on the social and economic aspects of the community. Therefore, there needs to be an effort to increase legal awareness among the community about the importance of land registration, as well as improvements in the implementation of registration so that it can be more effective and efficient in ensuring legal certainty.

## ACKNOWLEDGMENTS

The author is very grateful for the support of the lecturers who have guided Mr. Sukindar, SH, MH and Mr. Benhard Kurniawan Pasaribu, SH, MH, until this research is completed. It is hoped that there will be further research related to this relevant research, so that it can be used as a reference for library materials.

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