

# LEGAL RECONSTRUCTION OF LAND OWNERSHIP CERTIFICATES FROM A POSITIVISM PERSPECTIVE

Sri Andayani<sup>1\*</sup>, Ibrahim R<sup>1</sup>, Desak Putu Dewi Kasih<sup>1</sup>

## ABSTRACT

In principle, a certificate of land rights is a proof of title issued by the Land Office, which serves as a strong means of proof regarding physical data and juridical data on a plot of land. The purpose of this study is to analyze (1) the strength of certificates as a basis for ownership of land rights; and (2) Reconstruction of legal certainty from land ownership certificates through a legal positivism approach in Indonesia. This research is normative legal research with statutory, conceptual, and comparative approaches. The data analysis technique used is juridical analysis, namely analysis based on theories, concepts, and laws and regulations. The results of the study show that (1) The strength of the certificate as the basis for ownership of land rights before 5 (five) years of issuance of the certificate does not have strong legal force because it can still be sued by other parties who also have proof of ownership; and (2) The reconstruction of legal certainty from land ownership certificates through a legal positivism approach in Indonesia is formulated by closing the weaknesses of the negative land registration system and in the future land registration in Indonesia must choose a positive land registration system, in order to create legal certainty that can protect the interests of holders of rights certificates above ground.

**Keywords:** Reconstruction, Legal Certainty, Land Certificates.

## Background of the problem

The rights of control, ownership, allocation, use and control of land utilization with the aim of ensuring that the management and use of land can be implemented to the maximum extent possible for the prosperity of the people in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (hereinafter referred to as UUPA) have been clearly arranged. This provision is an implementation of the mandate of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia) which states that the earth, water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people.

Land registration according to UUPA aims to obtain legal certainty for people and certainty of rights for every holder of land rights. With the existence of written law, the parties concerned will easily know the legal rules and also easily know the authorities and obligations regarding land and other internal resources that are subject to ownership.<sup>1</sup> This land registration is further regulated in Article 19 paragraph (1) of the UUPA which states that "to ensure legal certainty, the Government shall carry out land registration throughout the territory of Indonesia according to the provisions regulated by government regulations". The words guaranteeing legal certainty should accommodate the strength of land rights where no one else can challenge them if they have been registered and inspected by the National Land Agency as a delegation of authority from the government and as data collectors and regulators of the existence and ownership of land in Indonesia.

Even though it has been regulated in the UUPA, there are still problems in the land sector caused by the lack of guarantees and legal certainty of land rights controlled by individuals or families and the community in general, because of not having written evidence. In the registration process to obtain written rights or certificates, problems often occur in the form of disputes, both regarding land boundaries and disputes regarding who has the right to the land.<sup>2</sup>

Disputes regarding land can be prevented, at least they can be minimized if efforts are made to avoid their causes, these disputes are legal events, so that the causes can be known and recognized by looking again through the views of existing land law. Things that can trigger disputes can be seen from the land registration publication system used in Indonesia,

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<sup>1</sup> Eddy Ruchiyat, 2013, Land Registration System After and Before the Implementation of UUPA, Citra Aditya Bakti, Bandung, p.37.

<sup>2</sup>.Boedi Harsono, 2018, Indonesian Agrarian Law, History of the Formation of the Basic Agrarian Law, Content and Implementation, Revised Edition, Djangkat, Jakarta, p.83.

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Corresponding Author: Sri Andayani  
mail: andayani1010@gmail.com  
Udayana University, Bali, Indonesia

namely negative publications that contain positive elements, as stated in Article 19 paragraph (2) letter c UUPA that registration produces letters of proof of rights which are valid as a strong and not absolute means of proof (the letter cannot be contested by other parties). So that land that has been registered and issued a proof of title is not guaranteed to be the property of the person whose name is registered in the proof of land.<sup>3</sup>

To realize legal certainty and protection for certificate holders as holders of certain authorized rights which have been registered with the national land office, which has received legal certainty. This means that the rights of the certificate holder receive legal protection. There is legal protection through the advice of statutory regulations, namely Article 32 of Government Regulation Number 24 of 1997 concerning Land Registration (hereinafter referred to as PP Land Registration) as amended by Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats and Land Registration (hereinafter referred to as PP Land Registration Amendments), which regulates:

1. A certificate is a certificate of proof of rights which is valid as a strong means of proof regarding the physical data and juridical data contained therein, if the physical data and juridical data are in accordance with the data in the measurement letter and land rights book in question; And
2. In the event that a certificate of land has been legally issued in the name of a person or legal entity who acquired the land in good faith and actually controls it, then other parties who feel they have the right to the land can no longer demand the implementation of that right if they within 5 (five) years from the issuance of the certificate, whether or not to submit a written objection to the holder of the certificate and to the land office concerned or not to the issuance of the certificate.

So, we can know the evidentiary strength of a certificate of land rights owned by the right holder which is guaranteed by law because it clearly states the type of right, physical information regarding the land, burdens on the land in legal events related to the land. If certain data are made or written by an authorized official (land office), then these data are considered correct. Although the main function of a land title certificate is as evidence, the certificate is not the only proof of ownership of land rights. In a positive publication system, the person who registers as the holder of land rights cannot have their rights violated.

In this system, the State as the registrant guarantees that the registration that has been carried out is correct. The characteristics of a positive publication system in land registration are (a) the land registration system uses a registration of titles system; (b) the certificate issued as proof of title is absolute, that is, the physical data and juridical data contained in the certificate cannot be contested and provide absolute trust in the land book; (c) the state as registrant guarantees that the physical data and juridical data in the land registration are correct because the registration is perfect; (d) third parties who acquire land in good faith receive absolute legal protection; (e) other parties who suffer losses due to the issuance of the certificate receive compensation in other forms; and (f) the implementation of land registration takes a long time, the land registration officer carries out his duties very carefully, and costs relatively more.<sup>4</sup>

There is a conflict of norms between the provisions contained in Article 19 UUPA and Article 32 paragraph (2) Land Registration Regulation jo. PP on Land Registration Amendments regarding legal certainty of land title certificates. Article 19 paragraph (2) letter c UUPA states that "land registration includes providing a certificate of proof of title which acts as a strong means of proof". Meanwhile, Article 32 paragraph (2) PP on Land Registration jo. The PP on Land Registration Changes states that:

"In the event that a certificate of land has been legally issued in the name of a person or legal entity who acquired the land in good faith and actually controls it, then other parties who feel they have the right to the land can no longer demand the implementation of that right if within a certain period of time 5 (five) years after the issuance of the certificate, do not submit written objections to the certificate holder and the Head of the Land Office concerned or submit a lawsuit to the Court regarding control of the land or the issuance of the certificate."

Between the provisions of Article 19 paragraph (2) letter c of the UUPA, there is a conflict between norms regarding land title certificates as strong evidence and the provisions as stated in Article 32 paragraph (2) PP on Land Registration jo. The PP on Land Registration is amended because the provisions of this Government Regulation do not allow other parties who feel they have rights to the land to submit objections within a period of 5 (five) years from the issuance of the certificate of title to the land. This conflict of norms of course also results in legal certainty for the parties whose names are listed on the land title certificate. Based on the construction of Article 19 paragraph (2) letter c UUPA, it states that "Providing valid proof of rights as a strong means of proof". The word "strong" in the meaning of Article 19 paragraph (2) letter c of the UUPA means that the land certificate given is "not absolute" and has legal consequences. Everything stated in it is considered true, as long as no one can prove the circumstances. stated that the certificate was incorrect. So that the actual rights holder will always be able to reclaim his or her registered rights in anyone's name. The publication system used in Article 32 paragraph (2) PP on Land Registration jo. PP Land Registration Changes is a positive publication system. This means that what is contained in the land book and the certificates of title issued are absolute

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<sup>3</sup>. Rusmadi Murad, 2021, Settlement of Legal Disputes Over Land, Revised Edition, Alumni, Bandung, p.6.

<sup>4</sup> Boedi Harsono, *op.cit.*, p.20.

means of proof so that third parties who act on the evidence receive absolute protection, even if it is later proven that the information contained therein This is not true, which can be seen from the provisions of Article 32 paragraph (2) PP on Land Registration jo. PP on Land Registration Changes.

After observing the applicable legal provisions of Article 32 paragraph (2) PP on Land Registration jo. PP on Land Registration Amendment by pointing out that the formal document of ownership of land rights in accordance with legal provisions is in the form of a certificate of title, it can be concluded that this land registration system applies a positive publication system because it provides legal certainty, the certificate issued as proof of absolute rights is physical data. and the juridical data contained in the certificate cannot be contested and provides absolute trust in the land book after a period of 5 years. However, in practice problems often arise related to the adoption of a land registration system in Indonesia which adheres to a negative publication system with a positive tendency. This is proven by overlapping certificates of title to a plot of land, which requires going through court to obtain certainty.

Land registration using a negative publication system cannot provide legal certainty and maximum legal protection to people registered as rights holders, because the State does not guarantee the correctness of the data presented to other parties who can provide stronger evidence. Holders of land rights who have proof of a land certificate can at any time lose their rights due to a lawsuit, because of which the certificate will be cancelled.

To dissect the problem of reconstructing legal certainty from land ownership certificates using a legal positivism approach in Indonesia, researchers used a legal positivism approach. Legal positivism is synonymous with the actions of officials who are stupid, rigid, old-fashioned in applying the law only to the extent of the articles in the law. Legal positivism according to Prof. Soetantyo, the use of the natural sciences way of thinking must be linked to science, including legal sciences.<sup>5</sup>

### **Formulation of the problem**

Based on the background described above, the problem formulation in this research can be stated in research questions as follows:

1. What is the strength of the certificate as a basis for ownership of land rights?
2. How is the reconstruction of legal certainty from land ownership certificates using a legal positivism approach in Indonesia?

### **Research methods**

This research is normative legal research with a statute approach (legislative approach), conceptual approach (conceptual approach) and comparative approach (comparative approach). Considering that this type of research is based on normative research, most of the data and legal materials used refer to secondary data which includes primary legal materials, consisting of various statutory regulations, jurisprudence and conventions related to reconstruction. legal certainty of land ownership certificates through a legal positivism approach in Indonesia, as well as secondary and tertiary legal materials.<sup>6</sup> In collecting data, researchers carried out literature searches (library research), both extensively and intensively. Library research aims to study, research and trace secondary data, in the form of legal materials.<sup>7</sup> Legal materials are normative-perspective in nature, used primarily to examine legal issues related to the reconstruction of legal certainty from land ownership certificates through a legal positivism approach in Indonesia, based on their binding strength are classified as primary legal materials, secondary legal materials and tertiary legal materials .<sup>8</sup> The data analysis technique used is juridical analysis, namely analysis that is based on theories, concepts and statutory regulations.

### **Discussion**

#### **1. Strength of Certificate as the Basis for Ownership of Land Rights**

Dynamic aspects in the provisions of Article 32 paragraph (2) Land Registration Regulation jo. PP on Land Registration Amendments which explicitly states that land registration is an absolute thing to do, so that every land in Indonesia has legal force and certainty, namely in the form of a land certificate and if this is studied philosophically, juridically and sociologically then the existence of the UUPA with instruments implementing regulations, which in this case are studied philosophically, juridically and sociologically, means the existence of the UUPA with its implementing regulations, in this case the PP on Land Registration jo. PP on Land Registration Amendments, especially Article 32 paragraph (2), which aims to create legal certainty in guaranteeing land rights throughout the territory of the Republic of Indonesia.

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<sup>5</sup> H.P. Panggabean, 2014, Application of legal Theory in the Indonesian judicial system, alumni, Bandung, p.152.

<sup>6</sup> Ronny Hanitijo Soemitro, 2011, Legal Research Methods and Jurisprudence, Revised Edition, Ghalia Indonesia, Jakarta, p. 97.

<sup>7</sup> Bambang Waluyo, 2011, Legal Research in Practice, Sinar Graphic Publishers, Jakarta, p. 18.

<sup>8</sup> Soerjono Soekanto, 2010, Introduction to Legal Research, Revised Edition, University of Indonesia Press, Jakarta, p.52.

Conceptually, it lies in the activity of harmonizing the relationship between values described in strict rules and explaining the attitude of action as a series of value translations at the final stage, to create, maintain and maintain peaceful social life, in the form of land registration in Indonesia, so that these regulations can bring and guarantee certainty and justice in society, because after all legal protection is part of the state's responsibility.

In general, land is always associated with land rights that are given or owned by someone, so that the benefits can be enjoyed and used according to its intended purpose.<sup>9</sup> Where in the Big Indonesian Dictionary, land is the surface of the earth or layer of the earth, while the meaning of land rights is the land, in the sense of not only a certain part of the earth's surface but all the contents and contents within it.

Land rights in the UUPA are reflected in the following articles:

"Article 4 paragraph (1) states that on the basis of the State's right to control as intended in Article 2, it is determined that there are various rights to the surface of the earth, called land, which can be given to and owned by people, either individually or jointly. with other people and legal entities."

"Article 4 paragraph (2) states that the land rights referred to in paragraph (1) of this article provide the authority to use the land in question, as well as the body of earth and water and the space above it which is only necessary for purposes directly related to the use. The land is within the limits according to this law and other higher legal regulations."

The process of granting rights to a land rights application does not only look at the procedural aspect. It is not enough for an application to only be analyzed by whether the applicant meets the requirements, physically examined, measured, whether the application for land rights has been announced, and other procedural matters, but must also be studied from a legal perspective.

Basically, granting rights to land includes several elements, namely (a) The subject of the applicant, with the research target being personal/citizen data; (b) The location of the land which concerns the actual location of the land described and its strict boundaries in accordance with the principle of Contradiction limitatief; and (c) Evidence of the acquisition of rights in a consecutive and valid manner according to law.<sup>10</sup> An application for land rights can be seen from a legal perspective, whether it is suitable to be processed, if the subject of the applicant can legally prove that he/she is the only party who has the right to the land they are requesting.

Based on the principles adopted in the UUPA, it adheres to the principle of attachment, both horizontal adhesion and vertical attachment, which states that a movable object is stuck or glued to an immovable object, based on the basic principle (attachment), objects that are attached to the main object are legally juridical must be considered as an inseparable part of the main object.<sup>11</sup> In other words, plants, buildings and so on that are on the land or attached to it are legally considered to be part of the land and are inseparable.

The concept of land rights contained in national agrarian law divides land rights into two forms, as follows:<sup>12</sup>

- a) Primary land rights are land rights that can be owned or controlled directly by a person or legal entity for a long period of time and can be transferred to other people or their heirs, such as Ownership Rights (HM), Building Use Rights (HGU). and Right to Use (HP); And
- b) Secondary land rights are temporary land rights such as mortgage rights, profit sharing business rights, boarding rights, and rental rights over agricultural land.

Of all primary land rights, property rights are the only primary land rights that have the strongest position compared to other primary land rights. Rights are not easily erased and can be defended from interference by other irresponsible parties.

In Indonesia, the land administration program as the issuance of land title certificates, which is the government's task, has a positive socio-economic impact on both the state and landowners. Registration of the land plot aims to obtain evidence in the form of a certificate so that the holder of the land rights has strong evidence of the land he owns and obtains legal certainty and protection from parties who are not responsible for using the land as business land or selling it to other people. others without the owner's knowledge. The meaning of Article 32 PP Land Registration jo. PP on Land Registration The amendment is that the certificate is strong evidence as long as it cannot be proven otherwise, where the physical data and juridical data contained in the certificate are correct data and must match the data contained in the land book and measurement letter in question. And those who have the right to obtain a certificate are the holders of land rights

<sup>9</sup> Suhariningsih, 2009, *Abandoned Land (Principles and Renewal of Concepts Towards Publishing)*, Selamat Pusaka, Jakarta, p.60.

<sup>10</sup> Rusmadi Murad, *op.cit*, p. 6

<sup>11</sup> Djuhaendah Hasan, 2016, *Property Guarantee Institution for Land and other Objects Attached to Land in the Concept of Implementing the Principle of Horizontal Separation*, Citra Aditya Bakti, Bandung, p.70.

<sup>12</sup> Supriadi, 2017, *Agrarian Law*, Sinar Graphics, Jakarta, p.64.

guaranteed by law. Certificate of title consisting of a copy of the Land Book and measurement letter bound in 1 (one) cover. The land certificate contains: (i) physical data: location, boundaries, area, physical description of the land and burdens on the land; and (ii). Juridical data: type of rights (ownership rights, building use rights, business use rights, use rights, management rights) and who the rights holder is.

A certificate as a land document is the result of the land registration process and is a written document containing physical data and juridical data on the land in question. These land documents can be used as collateral and become a reference for parties who have an interest in the land. The evidentiary power of a land certificate is strong as long as no other party proves otherwise. A land title certificate functions as strong and legal evidence, and is proof of ownership of land rights, although proof of ownership of land rights can still be proven by other evidence, for example: witnesses, sale and purchase deeds, or letters. decision to grant rights.

Issuance of certificates, based on Land Registration PP jo. PP on Land Registration Amendment which revokes Government Regulation Number 10 of 1961 concerning Land Registration, is regulated as follows: (a) issued for the benefit of the relevant right holder in accordance with the physical and juridical data that has been registered in the land book; (b) may only be handed over to the party whose name is listed in the land book, as the right holder, or to another party authorized by him; and (c) regarding land rights or ownership rights to apartment units jointly owned by several people or legal entities, one certificate is issued, which is given to one of the other joint right holders, and as many certificates as there are joint right holders can be issued to be given to each holder of the joint rights concerned, containing the name and size of their respective shares of said rights.

A certificate, apart from functioning as proof of ownership or control over land, also has another function, namely as a requirement if we want to build a building in the form of a residence on land that we own or control. One of the conditions for issuing a building construction permit is the certificate. Another thing, namely economically, the certificate also has a function as collateral for financing if we need a loan from the bank.

In the description above, the author analyzes using the theory of authority, namely, according to Sadjiono, authority by attribution is the granting of government authority by law makers to government organs, namely the National Land Agency which has the authority to issue certificates. And it uses the theory of legal certainty, because basically the main function of land registration is to obtain evidence in the form of a certificate so that the holder of the right to the land has strong evidence of the land they own and gets legal certainty and protection of their rights to the land.

Currently, land is a very important and strategic commodity; the importance of land in human life also makes land an object of crime. Crime cases often arise involving land objects. For example, fraud, buying and selling and fictitious, users (pledge) of fictitious land to banks, falsification of land certificates, duplication of land certificates and land crime mafia (syndicates).

A land title certificate is a product of an agency, namely the Land Office. Looking at the process of making and publishing it based on statutory regulations. Where in this case the owner of the land title certificate has ownership rights to the land. Land ownership rights are the status of land rights with the highest degree when compared with other rights statuses. Ownership rights are not limited and are enforced by the State, therefore ownership rights to land have the highest price or value when compared with the status of other land rights for plots of land of the same quality.

In principle, every piece of land has a single position in this hemisphere. No two (2) plots of land have the same position. Thus, every land that is certified or registered with the National Land Agency (BPN) should receive protection from the same registration of that land parcel. This protection can be provided if every land certificate issued is known with certainty as to its position or location on earth. In this way, any attempt to certify the same land can be immediately recognized and prevented by BPN. However, there is still certified land whose location is unknown due to the unavailability of maps. When the certificate was made in the past (under 2006) it did not function well due to the lack of tools and costs at that time.

## **2. Reconstructing Legal Certainty from Land Ownership Certificates through a Legal Positivism Approach in Indonesia**

In the activity of registering land rights, which results in a certificate of land rights, the guarantee of legal certainty and legal protection for the rights holders is increasingly realized. In order to prove land rights, the issuance of a certificate is intended as a form of proof of the name listed on the certificate as the holder of the right in question. A physical title certificate for land is a letter made for the purpose of providing proof of ownership. As a letter made by an official, its creation is based on certain data originating from the legal act on which the certificate was made. So, according to the type of legal act that underlies the certificate, according to the type of act there are different conditions and if these

conditions have been fulfilled for the purpose of land ownership, then a certificate is issued as proof of land ownership rights.<sup>13</sup>

The power of proving a certificate of title to land does not only apply externally or to wider parties, but also has internal power, namely functioning as proof of land rights for disputes that arise in the future if someone claims rights to the land. The certificate provides a sense of security for the holder or owner and the heirs so that their heirs do not experience difficulties in the future, meaning they do not have to go to great lengths to take care of it. When there is a lawsuit, the heirs can maintain their ownership properly.<sup>14</sup>

Adrian Sutedi's opinion is that the nature of the problems in a land title certificate dispute are generally of several types, namely (a) Issues involving priority in being able to be determined as the legal right holder for land that has legal status or for land that does not yet have rights; (b) Denial of any basis of rights or proof of acquisition used as a basis for granting rights; and (c) Errors in granting rights caused by incorrect application of regulations.<sup>15</sup>

The problem in point a is the main issue of land disputes in Indonesia. Because the priority to be determined as a legal rights holder must be strong evidence, namely several certificates that have been issued. However, strong means that it is not absolute or can still be challenged. The meaning of the strength of the certificate in the future or currently is always a legal issue for parties whose interests are harmed, what this means is understanding the juridical strength of the certificate of ownership of land that will be questioned. When in a dispute and the court decides to revoke or annul it and the party in fact wins, they only rely on other evidence, for example girik or petok.

Boedi Harsono stated that in a positive system, land registration uses a system that ensures that what is registered reflects the actual situation, both regarding the subject of the right and the object of the right. The government guarantees the correctness of the data that has been registered and for this purpose the government has examined the truth and validity of each file submitted for registration before being included in the land registers. Thus, the subject of rights who is registered as the holder of land rights is the legal right holder according to law and cannot be contested on any basis or reason. The person whose name is registered as a rights holder in the register, obtains what is called an indefeasible title (a right that cannot be contested).<sup>16</sup>

With the completion of registration in the name of the recipient of the rights, other people who are actually entitled lose their rights. He cannot demand the cancellation of legal acts that transfer the relevant rights to the buyer. In certain circumstances he can only claim compensation from the State. To deal with demands for compensation, the State provides a special fund.

In issuing land rights certificates, the use of the positivism paradigm in law apparently hinders the search for truth and justice that is true in accordance with conscience. That search is hindered by procedural walls created by the law itself. So, what appears on the surface is formal/procedural justice which does not yet represent or satisfy conscience.<sup>17</sup> Lili Rasjidi, said that in reality the positive legal school approach did not completely solve the problem. Problem solving that is oriented towards statutory regulations or positive law will only touch the symptoms of the problem but will not touch the root of the problem.<sup>18</sup>

In the legal system, justice is considered to be provided by making positive law, but in practice, the use of the legal positivism paradigm in law turns out to give rise to many rigidities such that the search for the truth and justice are never achieved. because it is blocked by procedural walls. These incidents are more concerning, because as a result of using a rigid positivist lens in interpreting various laws in Indonesia, various law enforcement policies and judges' decisions fail to produce substantial justice but are only able to produce procedural justice.

For example, in land registration using a negative publication system. Negative publication system, the certificate issued is a sign of strong proof of land rights, meaning that all information contained in the certificate has legal force and must be accepted as true information by the judge, as long as it is not proven otherwise by other means of evidence. Land registration uses a negative publication system, the State as registrant does not guarantee that the person registered as the

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<sup>13</sup>Ni Ketut Ayu Dewita Ismantari Artadi, 2011, Certificate of Land Ownership Rights and the Legal Consequences of the Deed of Sale and Purchase which is the Basis for the Issuance of the Certificate, (Thesis), Master of Notary Study Program, Faculty of Law, Brawijaya University, Malang.

<sup>14</sup>Beni Bosu, 2017, Latest Developments in Certificates (Land, Dependents and Condominiums), Mediatama Saptakarya, Jakarta, p.5.

<sup>15</sup>Adrian Sutedi, 2012, Land Rights Certificate, Sinar Graphics, Jakarta, p.198.

<sup>16</sup>Boedi Harsono, *op.cit*, p.20.

<sup>17</sup>FX Aji Sameko, 2011, Justice Versus Legal Procedures: Criticism of Modern Law, Scientific Oration for the Graduation of STHM Class XIII Bachelors, Jakarta, p. 2.

<sup>18</sup>H. Lili Rasjidi, 2009, Dynamics of Current Legal Conditions from a Theoretical and Philosophical Perspective, Mandar Maju, Bandung, p. 4-5.

right holder is truly the person who has the right because according to this system it is not the registration but the legality of the legal act that is carried out that determines the transfer of the right to the buyer. Registration does not make a person who obtains rights from an unauthorized party become the new rights holder.

In a negative publication system, the guarantee of legal protection given to third parties is not as absolute as in a positive system. Third parties are always careful and do not absolutely trust what is stated in the land registration book or the certificate of title issued by them. In the negative publication system, the principle of *nemo plus juris* applies, meaning that a person cannot surrender or transfer rights beyond what he himself has. A person who does not have the right to a particular plot of land cannot automatically take legal action to register the land, let alone transfer it to another party. The principle of *nemo plus juris* is in order to provide legal protection to the actual landowner, whose land is certified by someone else.

The characteristics of the negative publication system in land registration in force are:

- a) The land registration system uses a deed registration system (registration of deed).
- b) Certificates issued as proof of rights are strong, that is, the physical data and juridical data contained in the certificate are considered correct as long as they are not proven otherwise by other evidence. Certificates are not the only proof of rights.
- c) The state as registrar does not guarantee that the physical data and juridical data in land registration are correct.
- d) In this publication system, outdated institutions are used.
- e) Other parties who are disadvantaged by the issuance of the certificate can submit an objection to the land registration organizer to cancel the certificate or file a lawsuit with the court to request that the certificate be declared invalid;  
And
- f) The registration officer is passive, that is, he only accepts what is stated by the party requesting land registration.

If we examine and analyze how this negative publication system works, it can be concluded that this system basically cannot create legal certainty, let alone provide legal protection, because there is still the possibility of other parties interfering with the ownership of parties who already hold land title certificates as proof that they have complied with legal orders and/or statutory regulations.

Then Muchtar Wahid stated that a purely negative system could give rise to legal uncertainty. The fundamental weakness of the negative system is that land registration does not create inviolable rights. What determines whether a right and its ownership is valid or not is the legality of the legal act carried out, not its registration. Therefore, even though it has been registered in the land book and a certificate has been issued, there is always the possibility that the registered rights holder will lose the land rights they control due to being sued by the party who has the rights.<sup>19</sup>

The reconstruction of legal certainty of land ownership certificates through a legal positivism approach in Indonesia is formulated by covering the weaknesses of the negative land registration system and land registration in Indonesia in the future must choose a positive land registration system, in order to create legal certainty that can protect the interests of title certificate holders. on land, of course the right holder is based on and/or based on good faith (truth, both formal and material) and *Nemo Plus Juris*. These two principles are possessed by humans as creatures of God, and it is very natural for them to be realized and manifested in the behavior and actions of daily life, so that in the end a harmonious, progressive, and prosperous life will be created throughout the territory of the Unitary State. Republic of Indonesia.

## Conclusion

Based on the discussion stated above, it can be concluded as follows:

1. The strength of the certificate as the basis for ownership of land rights before 5 (five) years before the certificate is issued does not have strong legal force because it can still be sued by other parties who also have proof of ownership. This is because Indonesia adopts a land registration system with a negative system with a positive tendency which basically cannot create legal certainty let alone provide legal protection, because there is still the possibility of other parties interfering with the ownership of parties who already hold land title certificates as proof that they have complied with orders. laws and/or statutory regulations.
2. Reconstruct legal certainty of land ownership certificates through a legal positivism approach in Indonesia formulated by covering the weaknesses of the negative land registration system and land registration in Indonesia in the future must choose a positive land registration system, in order to create legal certainty that can protect the interests of the holders certificate of land rights, of course the right holder is based on and/or based on good faith (truth, both formal and material) and *Nemo Plus Juris*.

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<sup>19</sup> Muchtar Wahid, 2018, *Understanding Legal Certainty of Land Ownership Rights*, Republika Publishers, Jakarta, p.75-76

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**References**

1. Artadi, Ni Ketut Ayu Dewita Ismantari, 2011, Certificate of Land Ownership Rights and the Legal Consequences of the Deed of Sale and Purchase which is the Basis for the Issuance of the Certificate, (Thesis), Master of Notary Study Program, Faculty of Law, Brawijaya University, Malang.
2. Bosu, Beni, 2017, Latest Developments in Certificates (Land, Dependents and Condominiums), Mediatama Saptakarya, Jakarta.
3. Harsono, Boedi, 2018, Indonesian Agrarian Law, History of the Formation of the Basic Agrarian Law, Content and Implementation, Revised Edition, Djangkat, Jakarta.
4. Hasan, Djuhaendah, 2016, Property Guarantee Institution for Land and other Objects Attached to Land in the Concept of Implementing the Principle of Horizontal Separation, Citra Aditya Bakti, Bandung.
5. Murad, Rusmadi, 2021, Settlement of Legal Disputes Over Land, Revised Edition, Alumni, Bandung.
6. Panggabean, H.P., 2014, Application of Legal Theory in the Indonesian Judicial System, Alumni, Bandung.
7. Prabu Buana Rumiarta, I. N. (2022). Correlation Theory A.V. Dicey Perspective of the Rule of Law in Indonesia: Correlation Theory A.V. Dicey Perspective of the Rule of Law in Indonesia. Focus Journal Law Review, 2(1). <https://ojs.balidwipa.ac.id/index.php/fjl/article/view/19>
8. Rasjidi, H. Lili, 2009, Dynamics of Current Legal Conditions from a Theoretical and Philosophical Perspective, Mandar Maju, Bandung.
9. Ruchiyat, Eddy, 2013, Land Registration System After and Before the Implementation of UUPA, Citra Aditya Bakti, Bandung.
10. Rumiarta, ... (2023). Penafsiran Otoritatif dan Hermeneutika Yuridis Pada Frasa Repertorium Kewajiban Notaris. MORALITY: Jurnal Ilmu Hukum, 9(1), 26-37. doi:10.52947/morality.v9i1.332
11. Sameko, FX Aji, 2011, Justice Versus Legal Procedures: Criticism of Modern Law, Scientific Oration for the Graduation of STHM Class XIII Bachelors, Jakarta.
12. Soekanto, Soerjono, 2010, Introduction to Legal Research, Revised Edition, University of Indonesia Press, Jakarta.
13. Soemitro, Ronny Hanitijo, 2011, Legal Research Methods and Jurisprudence, Revised Edition, Ghalia Indonesia, Jakarta.
14. Suhariningsih, 2009, Abandoned Land (Principles and Renewal of Concepts Towards Publishing), Selamat Pusaka, Jakarta.
15. Supriadi, 2017, Agrarian Law, Sinar Graphics, Jakarta.
16. Sutedi, Adrian, 2012, Land Rights Certificate, Sinar Graphics, Jakarta.
17. Wahid, Muchtar, 2018, Understanding Legal Certainty of Land Ownership Rights, Republika Publishers, Jakarta.
18. Waluyo, Bambang, 2011, Legal Research in Practice, Sinar Graphic Publishers, Jakarta.
- 19. Legislation**
20. Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.
21. Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria (Lembaran Negara 1960 Nomor 104; Tambahan Lembaran Negara Nomor 2043).
22. Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah (Lembaran Negara Republik Indonesia Tahun 1997 Nomor 59).
23. Peraturan Pemerintah Nomor 18 Tahun 2021 tentang Hak Pengelolaan, Hak Atas Tanah, Satuan Rumah Susun dan Pendaftaran Tanah (Lembaran Negara Republik Indonesia Tahun 2021 Nomor 28, Tambahan Lembaran Negara Republik Indonesia Nomor 6630).