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Cancellation of SHGB on Cultivated Land Following PK Decision No. 788 PK/Pdt/2021: Responsibility of the Bogor Regency Land Office

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Abstract

The issuance of land title certificates must be carried out in accordance with the principle of prudence to ensure legal certainty and protection for the community. However, in practice, there are still instances where Certificates of Right to Build (SHGB) are issued for cultivated land that has been physically controlled by the community for decades, thereby giving rise to land disputes. This study aims to analyze the implementation of the principle of prudence in the issuance of SHGBs by the ATR/BPN Land Office of Bogor Regency and to analyze the form of legal liability for the issuance of SHGBs on cultivated land that has been under community control for more than 20 years. This study employs a legal-empirical method using a statutory approach, a case study approach,

and a conceptual approach. The results of the study indicate that the issuance of SHGB No. 4817/Sukahati in the name of PT. Star Tjemerlang administratively meets formal requirements; however, substantively, it does not align with the physical control of the land, which has been under Marja's control since 1987. The discrepancy between physical and legal data indicates that the principle of due diligence has not been optimally applied, particularly in field verification and land history research. This study contributes to strengthening the concept of the Land Office's legal accountability through the approach of unlawful acts by the government (onrechtmatige overheidsdaad).

Keywords

The principle of prudence, legal liability, cultivated land, land registration, Building Use Certificate.

A. Introduction

Land is a natural resource that plays a vital role in the lives of the Indonesian people, from legal, social, and economic perspectives.¹ This land is considered a natural resource bestowed upon the community by God, with the aim of improving their well-being.² Land not only has economic value but also serves a social function, as affirmed in Article 33, paragraph (3) of 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 utilized for the greatest prosperity of the people." This constitutional provision served as the basis for the enactment of Law No. 5 of 1960 on the Basic Provisions of Agrarian Law

¹ Maulana, A., & Hutagalung, H. (2025). "Reformasi pengelolaan tanah dalam sistem hukum agraria di Indonesia: Tantangan dan solusi untuk mewujudkan keadilan sosial dan keberlanjutan." *Jurnal Ilmu Multidisiplin*, 3(1), 245-256.

² Florianus SP Sangsun. (2007) "Tata Cara Mengurus Sertipikat Tanah." *Jakarta: Visimedia*.

(hereinafter referred to as the UUPA) as the foundation of national agrarian law. The UUPA was enacted with the aim of abolishing the colonial land law system and establishing legal certainty and justice in the control, ownership, and utilization of land.³ One of the key principles of the UUPA is the recognition of land tenure exercised in a tangible manner and in good faith by the community.⁴ In this context, land control is not merely understood as ownership evidenced by a certificate, but also encompasses physical control exercised continuously and openly.

In practice, there are still many instances of state-owned land that is occupied and cultivated by local communities as farmland without any legal title to support their claim. Such occupation of farmland often lasts for a long time, sometimes even decades, and is carried out continuously as a means of livelihood.⁵ This situation indicates a discrepancy between the community's physical control of the land and the legal title recorded administratively at the Land Office. To bridge this gap, the government, through Government Regulation No. 24 of 1997 on Land Registration (hereinafter referred to as GR 24/1997), provides a legal basis for the recognition of long-standing land tenure.⁶ Article 24(2) of GR 24/1997 provides that physical possession of land for 20

³ Fakhurrozi, M., Rahmatiar, Y., & Abas, M. (2025). "Kajian Hukum Tata Negara Terhadap Perlindungan Hak Atas Tanah Dalam Konteks UU No. 5 Tahun 1960." *Morality: Jurnal Ilmu Hukum*, 11(1), 148-157.

⁴ Gozali, D. S. (2025). "Perlindungan Hukum Pembeli Yang Beritikad Baik Dalam Praktik Jual Beli Tanah di Bawah Tangan." *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, 3(3), 2727-2736.

⁵ Tarfi, A & Amri, I. (2021). "Reforma Agraria sebagai Jalan Menuju Perdamaian yang Berkelanjutan di Aceh". *Bhumi, Jurnal Agraria dan Pertanahan*, 7 (2), 210-225.

⁶ Achmad, A. (2002). "Hukum Pertanahan, Pemberian Hak Atas Tanah Negara, Sertifikat dan Permasalahan." *Jakarta: Prestasi Pustaka*.

(twenty) consecutive years or more in good faith may serve as the basis for the registration of land rights, provided that such possession is substantiated by credible evidence and witness testimony. This provision is intended to provide legal certainty for members of the public who have long possessed land, even though they do not yet possess proof of title in the form of a certificate.⁷ This is consistent with the purpose of land registration, which is to ensure legal certainty; thus, land registration is conducted not only to meet the needs of the public but also to meet the needs of the government. This is because an individual's right to possess land is a fundamental right that deserves protection and guarantees of ownership.⁸

However, in the practice of land registration, these provisions are not always applied optimally. It is still common for land title certificates to be issued without taking into account the long-standing physical possession of the land by another party. This indicates a lack of due diligence on the part of the Land Office in exercising its authority, which has the potential to lead to land disputes.⁹

The term "cultivated land," which is at the heart of this study, refers to land that has been cultivated and utilized by the community but does not yet have an official certificate as proof of ownership rights. Cultivated land is not, in principle, included among the types of land rights directly recognized

⁷ Simarmata, Y. S. (2021). "Kedudukan hukum pihak yang menguasai objek hak atas tanah terkait proses peralihan hak yang belum sempurna." *Indonesian Notary*, 3(2), 8.

⁸ Wahanisa, R., Suhadi, S., & Fibrianti, N. (2010). "Sosialisasi Pentingnya Kepemilikan Sertifikat Tanah Sebagai Bukti Penguasaan Hak Milik Atas Tanah Berdasar Pp No. 24 Tahun 1997 Tentang Pendaftaran Tanah Di Desa Jetis Kecamatan Bandungan Kabupaten Semarang". *Jurnal Abdimas*, 14(2).

⁹ Kusuma, R. B. (2025). "Kepastian Hukum Bagi Pihak Ketiga Beritikad Baik Dalam Sengketa Kepemilikan Tanah." *Jurnal Sains, Ekonomi, Manajemen, Akuntansi dan Hukum*, 2(5), 437-449.

under the UUPA, unless the cultivator can demonstrate continuous, open, and in good faith possession of the land, and there are no legal claims or demands from other parties regarding the land¹⁰, given that land has high economic value and is the subject of intense competition regarding its ownership and use.¹¹ The main issue regarding uncertified cultivated land lies in the unclear status of land ownership, which has the potential to lead to disputes or conflicts among the parties involved. On the one hand, communities that have long managed and utilized the land feel they have a right to the land they cultivate. On the other hand, however, the land may also be subject to claims by other parties who assert they have rights to it.¹²

In the administration of land registration, the application of the principle of due diligence by land officials plays a crucial role in ensuring legal certainty and protection of the public's land rights. The principle of due diligence requires that every land administration process be conducted thoroughly, meticulously, and based on accurate physical and legal data prior to the issuance of a land title certificate.¹³ The application of this principle is important because errors in the process of examining and issuing certificates can lead to land disputes, overlapping rights, and even losses for the

¹⁰ Padhilla, Risma Retianti, and Asmarani Ramli. "Perlindungan Hukum antara Pendaftar Pertama dengan Pembeli Beritikad Baik Pada Aspek Kepastian Hukum dalam Sengketa Sertipikat Ganda." *Bookchapter Hukum dan Lingkungan* 1 (2025): 1541-1572.

¹¹ Sitohang, H. J., & Silviana, A. (2024). "Penyelesaian Sengketa Tanah Garapan dengan Status Tanah Belum Bersertifikat." *Notarius*, 17(3), 1883-1901.

¹² Damantu, S., & Arief, M. (2025). "Gerakan Sosial Masyarakat: Aksi Kolektif Masyarakat Desa Lembobelala Dalam Menolak Klaim Lahan Oleh PT. Perkebunan Nusantara XIV." *Journal of Reiventing*, 3(1)

¹³ Adrian Sutedi, S. H. M. H. (2023). *Sertifikat hak atas tanah*. Sinar Grafika.

communities that actually occupy the land.¹⁴ In practice, officials at the Bogor Regency Land Office are required to investigate the land's history, the validity of the legal basis for ownership, and the consistency between physical and legal data before issuing land title certificates. Such due diligence is particularly necessary for cultivated land that has long been controlled and utilized by the community but lacks strong evidence of ownership. If the verification process is not carried out thoroughly, it may lead to the issuance of certificates with administrative defects or disputes between the parties in control of the land and other parties who have acquired rights to the land.¹⁵

This issue is clearly reflected in the Decision No. 328/Pdt.G/2017/PN.Cbn of the Cibinong District Court, in conjunction with Decision No. 102/PDT/2019/PT. BDG in conjunction with Supreme Court Decision No. 3626 K/Pdt/2019, in conjunction with Supreme Court Review Decision No. 788 PK/Pdt/2021. In the main issue of the case, between a Plaintiff named Marja et al. and the Defendant PT. Star Tjemerlang, the Plaintiff possesses a plot of cultivated land—now referred to as the subject of the dispute—which was acquired from their parents. The land has been continuously cultivated as a means of livelihood without interruption from 1987 to 2015, and no one has claimed ownership of it. The rights to the land have never been relinquished, nor has the right to cultivate it been transferred to any other party. The land originated from the former Nak Barat plantation, Verponding 45, which was subsequently

¹⁴ Sasmita, A. A., Hafidz, M. R., & Khalid, H. (2022). "Penerapan Prinsip Kehati-Hatian Terhadap Pendaftaran Hak Milik Atas Tanah Sebagai Upaya Mencegah Terbitnya Setipikat Ganda." *Journal of Lex Generalis (JLG)*, 3(5), 1139-1158.

¹⁵ Karim, M. P., Dungga, W. A., & Mantali, A. R. Y. (2023). "Akibat Hukum dari Diterbitkannya Sertifikat Tanah dengan Kepemilikan Ganda." *Journal of Comprehensive Science (JCS)*, 2(6).

converted into state-controlled land following the enactment of the UUPA. Therefore, the plaintiff initiated the registration process for rights to the cultivated land and applied for ownership status with the National Land Agency of Bogor Regency; however, a Certificate of Right to Build was issued in the name of PT. Star Tjemerlang without the plaintiff's knowledge or consent. Meanwhile, the Defendant has held the disputed property since 2009, and a Certificate of Right to Build (hereinafter referred to as SHGB) No. 4817/Sukahati was issued by the National Land Agency of Bogor Regency on the date in question, acting in good faith, not arbitrarily, and in accordance with the of Good Governance (AAUPB) and did not violate the law regarding land registration, and has been in possession of the disputed property from 2009 through 2017.

Following the course of the case, Marja initially lost at the Cibinong District Court and the Bandung High Court, and only prevailed at the Supreme Court's cassation level; this cassation decision became final after PT Star Tjemerlang's petition for judicial review was rejected. After reviewing the evidence, the Panel of Judges ruled that the disputed property belonged to the Plaintiff and that the Defendant's proof of ownership—in the form of SHGB No. 4817/Sukahati—which stated that the title was no longer binding regarding the subject matter—was no longer valid or was null and void on the grounds that its issuance constituted an unlawful act, as it violated the Plaintiff's rights, and that there was a discrepancy between the physical and legal data in its issuance.

To analyze the issues in this study, three well-known legal theories were used as analytical tools. First, Philipus M. Hadjon's (1987) Theory of Legal Protection, which distinguishes between preventive legal protection (prevention prior to a dispute) and repressive legal protection (dispute

resolution). This theory is relevant for assessing the implementation of the principle of due diligence in the issuance of certificates. Second, the Theory of Unlawful Acts (*Onrechtmatige Daad*) by Rosa Agustina (2003), which formulates the four elements of an unlawful act: the unlawful act itself, fault, damage, and a causal link. This theory is used to determine the legal liability of the Land Office. Third, Gustav Radbruch's Theory of Legal Certainty, which emphasizes that the law must provide certainty (*rechtssicherheit*), justice (*gerechtigkei*t), and utility (*zweckmäßigkeit*). These three theories form the foundation of the analysis in this study.

Previous studies, such as that by Audry Zefanya (2022), have examined the criteria for establishing physical control over land through a statement of physical control over a parcel of land, focusing on the regulation and application of physical control as a criterion for land ownership in the registration process, particularly when formal evidence is not yet available. Another study by Safrin Salam (2023) discusses the comparison between written evidence (certificates) and physical control of land for 20 years as evidence in land disputes, with this study emphasizing the probative value of physical control in a legal context. Additionally, researcher Tedy Septiady (2024) discusses legal certainty for legal entities holding Building Use Rights (HGB) over unused or vacant land plots based on Ministerial Regulation ATR/BPN No. 18 of 2021 on Procedures for the Determination of Land Management Rights and Land Rights, with the research focusing on the extension/renewal of HGB and the legal consequences if the land is not utilized in accordance with the regulations. Thus, this study fills the gap left by the three previous studies by focusing on the legal responsibility of the Bogor Regency ATR/BPN Land Office regarding the issuance of SHGBs on cultivated land that has been under control for

more than 20 years.

The novelty of this study lies in the use of Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency No. 9 of 1999 concerning Procedures for the Granting and Revocation of State Land Rights and Management Rights, specifically Article 33(2) number (2) regarding the obligation to verify physical and legal data, as the primary instrument for assessing legal certainty. By combining the principle of prudence with the provisions of PMNA No. 9/1999, this study offers a new analytical approach to determining the form of legal liability of the Land Office for the issuance of SHGBs on cultivated land that has been under control for more than 20 years.

Based on the background of the issuance of SHGB No. 4817/Sukahati by the ATR/BPN Land Office of Bogor Regency regarding cultivated land that has been physically occupied by the Marja community since 1987 without their consent, this study is structured around two main research questions formulated empirically. First, how was the principle of due diligence implemented in the issuance of the SHGB by the Bogor Regency ATR/BPN Land Office? Second, what is the form of legal liability of the Bogor Regency ATR/BPN Land Office resulting in the revocation of the SHGB based on the Decision of the Cibinong District Court No. 328/Pdt.G/2017/PN.Cbn in conjunction with the Decision of the Bandung High Court No. 102/PDT/2019/PT. BDG in conjunction with Supreme Court Decision No. 3626 K/Pdt/2019, and Supreme Court Review Decision No. 788 PK/Pdt/2021? The objectives of this study are (1) to reveal the gap between the legal norm regarding land possession for more than 20 years and the verification practices in the issuance of SHGBs by the Bogor Regency ATR/BPN Land Office, and (2) to formulate a form of proportional legal accountability based on empirical findings to strengthen the

accountability of land institutions.

This study employs a juridical-empirical method with a descriptive qualitative approach. According to Soerjono Soekanto, the juridical-empirical method involves identifying the law (*law in the books*) and examining the effectiveness of its implementation in society¹⁶, thereby revealing the gap between *das Sollen* and *das Sein*. This approach was chosen because the study aims to analyze the legal responsibilities of the Land Office based on the principle of due diligence in the issuance of certificates, which has implications for actual disputes in the community. The approach used in this study refers to Peter Mahmud Marzuki's typology, namely through the statutory approach, examining the UUPA, GR 24/1997, and PMNA/KBPN No. 9/1999, in addition to employing a case approach by analyzing the Decision of the Cibinong District Court No. 328/Pdt.G/2017, the Decision of the Bandung High Court No. 102/PDT/2019, Supreme Court Decision No. 3626 K/Pdt/2019, and Cassation Decision No. 788 PK/Pdt/2021, as well as through a conceptual approach by utilizing the theory of legal protection (Philipus M. Hadjon), the theory of unlawful acts (Rosa Agustina), and the theory of legal certainty (Gustav Radbruch).

The data sources consist of primary data obtained through an in-depth interview with Mr. Gelar Dwihandaya, S.H., Technical Policy Analyst at the Dispute Control and Resolution Section of the Bogor Regency Land Office, on April 17, 2026, as well as secondary data related to SHGB No. 4817/Sukahati, court decisions, laws and regulations, and legal literature. In this study, the data analysis technique employed the Miles & Huberman (2014) model, which consists of three stages: data reduction (extracting key facts from court decisions and interviews), data presentation (in

¹⁶ Burhan Ashsofa, *Metode Penelitian Hukum*, Rineka Cipta, Jakarta, 1998, hlm 24

the form of tables and analytical narratives), and drawing conclusions (continuous verification). This model is well-known in empirical legal research because it allows researchers to draw valid and transparent conclusions. Data validity was tested through source triangulation (comparing interview results with court decision documents) and methodological triangulation (using interviews, documentation, and literature review simultaneously).

B. Analysis of the Implementation of the Principle of Prudence in the Issuance of SHGBs by the ATR/BPN Land Office of Bogor Regency

A Certificate of Right to Build (SHGB) is a land right granted by the state to individuals or legal entities, allowing them to construct and own buildings on land that they do not own for a specified period of time, in accordance with applicable laws and regulations.¹⁷ As a land administration document, the SHGB issued by the Land Office has strong evidentiary weight as stipulated in GR 24/1997 on Land Registration. Before being issued by the Land Office, the certificate issuance process must go through several stages as stipulated in Government Regulation No. 18 of 2021, whereby the applicant must provide valid identification in the form of the latest Resident Identity Card (KTP) and Family Card (KK) as proof of legal standing, in addition, documents demonstrating the history of land ownership, such as girik, Letter C, Petok D, deeds of sale, or a Land History Certificate from the village/subdistrict office, must be attached as the basis for determining land rights. If the land was acquired through a transfer of rights, tax documents including the

¹⁷ Resa, M., Prakoso, K. P., Aqsa, M. A., Arip, A. F. R., Putra, M. E. E., & Mubarok, A. (2024). "Tinjauan Hukum Agraria dalam Implementasi Surat Hak Guna Bangunan di Batam Kepulauan Riau." *Almufi Jurnal Sosial dan Humaniora*, 1(2), 98-106.

current year's Property Tax Payment Notice (SPPT PBB) and proof of payment of the Land and Building Transfer Tax (BPHTB) must also be included. If complete written evidence is unavailable, proof may be established through continuous physical possession of the land in good faith for a minimum of 20 years, supported by testimony from a credible party. Regarding the physical aspects of the land, the applicant is required to install boundary markers and ensure that the land boundaries have been agreed upon with adjacent landowners before the survey is conducted by the Land Office in accordance with Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation No. 16 of 2021.¹⁸

In the case that is the subject of this study, the plaintiff sought to register a plot of land measuring 3,338 m² (three thousand three hundred thirty-eight square meters) located in Sukahati Village, Cibinong Subdistrict, Bogor Regency, West Java Province, which had been continuously cultivated for 20 years ; however, upon verification at the Bogor Regency Land Office, it was found that a Certificate of Ownership (SHGB) No. 4817 had been issued for that plot of land in the name of PT. STAR TJEMERLANG. This indicates a conflict between physical control of the land and the legal status established by the certificate.

¹⁸ Kementerian Agraria dan Tata Ruang/Badan Pertanahan Nasional. (2026, April 6). *"Ingin sertipikatkan tanah untuk pertama kali secara mandiri, lengkapi syarat berikut. ATR/BPN."* <https://www.atrbpn.go.id/berita/ingin-sertipikatkan-tanah-untuk-pertama-kali-secara-mandiri-lengkapi-syarat-berikut>

Image 1. Building Use Certificate No. 4817



Source: Bogor Regency Land Office, 2026.

Based on the SHGB certificate shown above, PT. STAR TJEMERLANG essentially already possesses legal certainty, as the certificate is fundamentally the most crucial element in Indonesia's land tenure system. Ironically, however, in this case, the very certificate that should serve as a guarantee of legal certainty has become a source of legal uncertainty because it was issued without being based on a substantive verification of the actual physical control on the ground. The legal certainty that Marja, as a good-faith cultivator for over 20 years, should have enjoyed has been stripped away by an administrative decision resulting from a suboptimal verification process; the issuance of that SHGB should have aligned with the data—both physical and legal—on record. However, in reality, a dispute exists within the process, indicating a lack of due diligence in the registration and issuance of the SHGB. Within the land registration system, this situation must be a primary focus for land officials before

granting land rights. Physical data and legal data are two critical elements that must align. Discrepancies between them indicate that the administrative research and verification processes were not conducted optimally.¹⁹

1. *Analysis of the Implementation of the Prudence Principle in Data Verification*

In the land registration process, the principle of due diligence reflects one of the fundamental principles of land registration, namely the principle of security. The principle of security emphasizes administrative procedures based on complete information and documentation, prepared with due diligence and meticulous care, so as to ensure accurate decisions and provide legal certainty.²⁰ Therefore, the principle of safety requires government officials to exercise caution in everything they do.

In line with the analysis of the implementation of the principle of prudence in the issuance of SHGBs by the ATR/BPN Land Office of Bogor Regency, Philipus M. Hadjon presented a theory regarding legal protection, according to which legal protection for the people is divided into two forms: preventive legal protection and repressive legal protection.²¹ Preventive legal protection refers to protection provided before a dispute arises, specifically through preventive measures such as verification, public notice, and thorough on-site inspections prior to the issuance of an administrative

¹⁹ Pransisto, J. (2023). "Analisis Yuridis Pengolahan Data Fisik dan Yuridis Dalam Pendaftaran Tanah Menurut PP No 24 Tahun 1997 di Kantor Pertanahan Kabupaten Maros." *Jurnal Litigasi Amsir*, 219-238.

²⁰ Rahmansyah, R. (2025). "Prinsip Kehati-Hatian Penerbitan Sertifikat Hak Milik oleh Kantor Agraria dan Tata Ruang Badan Pertanahan Nasional Kabupaten Asahan." *Citra Justicia: Majalah Hukum dan Dinamika Masyarakat*, 26(2), 142-151.

²¹ Philipus, M. H. (1987). "Perlindungan hukum bagi rakyat Indonesia." *Bina Ilmu, Surabaya*, hlm. 29-30.

decision. In contrast, repressive legal protection aims to resolve disputes arising from legal violations through available dispute resolution mechanisms, including both the general courts and administrative courts.²² In the context of land registration, the principle of due diligence serves as the primary preventive legal safeguard; it requires that every decision to issue a certificate be based on accurate, meticulous, and comprehensive verification of both physical and legal data, so that the rights of third parties who have actual control over the land are not overlooked. If this preventive legal protection fails to be optimally applied, then repressive legal protection through the judicial process becomes the only remaining avenue for the aggrieved party, as evidenced in this case, which had to go through four levels of court over more than seven years to obtain justice.

The Bogor Regency Land Office should implement the principle of due diligence by conducting on-site verification of physical data. This verification includes examining the location of the land, the boundaries of the land parcels, the land area, land use, and which parties actually control and utilize the land.²³ If the on-site inspection had been conducted thoroughly, the land officials would have been aware from the outset that the plaintiff had been cultivating the land for decades. Given this information, the issuance of the SHGB could have been postponed until the legal status of the land's ownership was clarified.

In addition to verifying physical data, the Bogor Regency Land Office is also required to verify legal data. This

²² Zulfi, H. R. (2026). "Perlindungan Hukum Bagi Aparatur Sipil Negara Melalui Mekanisme Pengadilan Tata Usaha Negara." *Jurnal Reformasi Hukum: Cogito Ergo Sum*, 9(1), 35-43.

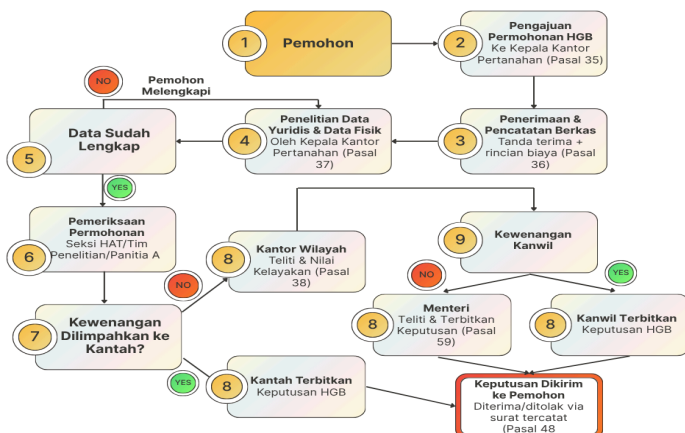
²³ Purba, G. A. G., & Primantari, A. A. A. (2025). "Sertifikat Ganda dalam Sengketa Tanah: Tinjauan Hukum Validitas Sertifikat Hak Milik dalam Sistem Pertanahan Nasional." *Jurnal Media Akademik (JMA)*, 3(10).

verification includes an investigation into the basis for the applicant's possession or acquisition of the land, the history of land rights, the validity of supporting documents, and the possibility of rights or claims by other parties.²⁴ Ideally, legal data should be aligned with physical data so that there is no discrepancy between administrative documents and the actual conditions on the ground. However, in this case, the issuance of a SHGB for land that has long been in the possession of another party indicates that the alignment between physical and legal data was not carried out optimally.

Based on the results of an interview conducted with Mr. Gelar Dwihandaya, S.H., Technical Policy Analyst at the Dispute Control and Resolution Section of the Bogor Regency Land Office on April 20, 2026, it was stated that "The issuance of SHGBs, specifically SHGB No. 4817/Sukahati, was carried out through the Granting of HGBs in accordance with PMNA/KBPN No. 9/1999, Paragraph 2 of the Procedures for Granting Building Use Rights, Articles 35 through 48." The process for granting Building Use Rights is as follows:

²⁴ Koswara, D., Fakhriah, E. L., & Haspada, D. (2024). "Konsekuensi Hukum Sertipikat Hak Atas Tanah Ganda Ditinjau Dari Undang Undang No. 5 Tahun 1960 (UUPA) Dan Peraturan Pemerintah No. 24 Tahun 1997 Tentang Pendaftaran Tanah Dikaitkan Dengan Kepastian Hukum." *Iustitia Omnibus: Jurnal Ilmu Hukum*, 5(2), 91-105.

Image 2. Procedural Flowchart for the Issuance of Building Use Rights pursuant to PMNA/KBPN No. 9/1999.



Source: The Author's Research Findings Based on PMNA/KBPN No. 9/1999 on Procedures for the Granting and Revocation of State Land Rights and Management Rights, 2026.

Based on the image above, it can be concluded that the issuance of the SHGB to PT. STAR TJEMERLANG should have fulfilled the requirements for an SHGB application as specified in Article 33 of PMNA/KBPN No. 9/1999 concerning Procedures for the Granting and Revocation of State Land Rights and Management Rights, which states:

- (1) "Applications for Building Use Rights must be submitted in writing."
- (2) An application for a Building Use Right as referred to in paragraph (1) shall include:
 - a. Information about the applicant:
 1. "For individuals: name, age, nationality, place of residence, and occupation, as well as information regarding their spouse and any dependent children;"
 2. "If the legal entity: its name, registered office, and

articles of incorporation or founding regulations comply with the provisions of applicable laws and regulations”

- b. “Information regarding the land, including legal and physical data:”
 - a. “The basis of ownership or title may include certificates, girik, land allotment letters, documents evidencing the transfer of rights and payment for land and houses, and/or land purchased from the government, court decisions, deeds issued by a Public Notary (PPAT), deeds of transfer of rights, and other documents evidencing the acquisition of land;”
 - b. “Location, boundaries, and area (if there is a Survey Certificate or Site Plan, please specify the date and number);”
 - c. “Land use (agricultural, non-agricultural);”
 - d. “Land use plan;”
 - e. “Land status (private land or state-owned land);”
- c. Miscellaneous:
 - a. “Information regarding the number of parcels, area, and status of the lands owned by the applicant, including the parcel of land being applied for;”
 - b. “Any other information deemed necessary.”

To determine the extent to which PT. Star Tjemerlang has met the requirements for the SHGB application, the author compared the administrative requirements with the substantive facts revealed during the trial, as follows:

Table 1. Data on Compliance with the Formal Requirements for SHGB No. 4817/Sukahati pursuant to Article 33 of PMNA/KBPN No. 9 of 1999

Elements of Article 33	Compliance Status	Data Description
Identity of the applicant (legal entity)	Fulfilled	PT. Star Tjemerlang: registered, with a valid certificate of incorporation
Basis of ownership/legal basis	Administratively compliant	The document is complete, but contradicts the facts regarding the occupation of Marja (since 1987)
Physical data (location, boundaries, area)	Fulfilled	Survey Certificate No. 92/Sukahati/2009, area 3,338 m ²
Soil type	Fulfilled	Non-agricultural
Land use plan	Fulfilled	For commercial buildings
Land status	Declared state land	Fact: ruled by Marja for 28 years

Source: Researcher Analysis, 2026

Based on the table above, PT. STAR TJEMERLANG's fulfillment of the requirements set forth in Article 33 contradicts the facts established during the first trial, specifically regarding the basis of possession or legal title. PT. STAR TJEMERLANG, where the land in dispute was originally a former Dutch plantation, became a plantation of

PT Dagang Ciliwung, and subsequently became a plantation of PT Star Tjemerlang pursuant to the Decision of the Director General of Agrarian Affairs No. 301/Dirjen Agraria 1984 in conjunction with the Decision of the Head of the Bogor Regency Land Office No. 089/SK.II. D/NF/1998 dated November 21, 1998, covering an area of 100 hectares, states that the transfer of the land did not meet the principle of physical use (intensity) under National Land Law because PT Dagang Ciliwung did not have physical control of the land when transferring it to PT Star Tjemerlang. Likewise, the transferee, PT Star Tjemerlang, has never had physical control of the land from the past until now. Meanwhile, since the Dutch plantation was abandoned, the land has physically become Free State Land that has been controlled by the local community originally controlled by Marja's parents and subsequently transferred to Marja, who has controlled it for 28 years.

Second, regarding physical data on location, boundaries, and area, PT. STAR TJEMERLANG has held Survey Certificate No. 92/Sukahati/2009 dated June 18, 2009; during the field inspection or surveying activities, no party raised any objections, this aligns with what was stated by Mr. Gelar Dwihandaya, S.H., namely that "in the follow-up process of PT. Star Tjemerlang's application, if during the Survey Team's measurement at the site or the Committee A's inspection of the land at that location there are objections from another party (i.e., Marja) or signs of physical occupation by another party (i.e., Marja), then PT. Star Tjemerlang's application cannot be processed further." However, during the on-site inspection, the actual (real) boundaries did not match or differed from the boundaries stated in the certificate. Meanwhile, after the Dutch plantation ended, the land was controlled by the community, including Marja's parents and subsequently her heirs, namely Marja. The disputed property

has been enclosed by a wall, controlled, and cultivated; this control has been continuous from the past until the present. The presence of this permanent and visible perimeter wall should have been identifiable during any field inspection conducted in good faith.²⁵ The Land Office's claim that no signs of physical possession by another party were found at the time of the survey becomes difficult to sustain under legal reasoning when confronted with the facts established by the Supreme Court. This situation reinforces the finding that the field verification was not conducted with an adequate standard of due diligence, or at the very least that the results of the verification were not properly interpreted or followed up on.

Third, regarding the land use plan, PT. STAR TJEMERLANG uses the land for the conduct of the company's business activities; however, in the course of implementation, as the holder of the Right to Build (HGB), it has been negligent and has failed to fulfill its obligations as the HGB holder, because to date, the lands of PT. STAR TJEMERLANG that already have an HGB certificate "have been abandoned," with no development having been carried out; This aligns with the Decision of the Head of the Regional Office of the National Land Agency for West Java Province, No. 48/KEP-32.16/H/2011, regarding the enforcement of land regulation in the areas of Sukahati and Karadenan villages. Meanwhile, Marja wanted to take control of and develop the land, converting it from an orchard to a residential development site. Ultimately, the Plaintiff entered into a partnership with a housing developer with the aim of building housing for the general public so that the land I have been

²⁵ Saputri, M. R., Aswadi, K., & Mauludin, N. A. (2024). "Tanggung Jawab Badan Pertanahan Nasional Terhadap Perbedaan Data Fisik Di Sertifikat Dengan Di Lapangan (Studi Kasus Di Kantor Pertanahan Kabupaten Lombok Barat)". *Unizar Recht Journal (URJ)*, 3(3), 492-502.

managing all this time would yield greater economic benefits.

Fourth, as the researcher noted above, the land status of PT Star Tjemerlang was originally part of a former Dutch plantation, which later became a plantation owned by PT Dagang Ciliwung, and subsequently became a plantation owned by PT Star Tjemerlang. PT Dagang Ciliwung did not have physical control of the land at the time of the transfer to PT Star Tjemerlang. Likewise, the party that received the transfer, PT Star Tjemerlang, has never had physical control of the land from the beginning until now. Meanwhile, according to Marja, the land is state-owned land.

Furthermore, one important aspect of the principle of prudence that was not fully implemented in this case is the public notice mechanism as stipulated in Article 26 of Government Regulation No. 24 of 1997, which requires the Land Office to publish the physical and legal details of every land registration application for a period of 30 days, with the aim of providing interested parties the opportunity to file objections before the certificate is issued.²⁶ This notification mechanism is the most important preventive legal safeguard in the land registration system, as it serves as the sole formal link between the administrative land registration process and the parties with a physical interest in the land.²⁷ However, in this case, a fundamental question arises that was not explicitly addressed in the trial record: was the public notice regarding PT. Star Tjemerlang's application for a SHGB actually carried out effectively and made accessible to Marja,

²⁶ Sudradjat, A. (2024). "Government Regulation Number 24 of 1997 Concerning Land Registration in Implementation and Problems at Regency/City National Land Agency Offices". *JILPR Journal Indonesia Law and Policy Review*, 6(1), 13-21.

²⁷ Wati, D. P. (2025). "Akibat Hukum Sertifikat Ganda Terhadap Kepastian Hukum Dalam Menjamin Kepastian dan Perlindungan Hukum Bagi Hak Milik Tanah". *Jurnal Media Akademik (JMA)*, 3(11).

as the party that has physically controlled the land since 1987? If the announcement was merely posted on the bulletin board at the Land Office or the Subdistrict Office without any active outreach to the party physically in control of the land, then the announcement mechanism was fulfilled only formally but failed substantively as a preventive legal protection instrument.²⁸ This is what distinguishes verification that merely goes through the motions from verification that truly applies the principle of prudence in a substantive manner. Therefore, the ideal scenario can be summarized as follows:

1. Verification of physical data: ideally, this requires a comprehensive on-site inspection covering the location, boundaries, area, use, and signs of physical control by any party. However, the trial evidence shows that the permanent perimeter wall built by Marja since 1987 as a manifestation of tangible and continuous physical control was not identified or was overlooked in the reports of the surveyors or Committee A.
2. Verification of legal data should ideally include an investigation of the land's history, an examination of the underlying rights, an assessment of potential claims by third parties, and cross-referencing with physical data. In fact, PT. Star Tjemerlang never had physical possession of the land, nor did PT. Dagang Ciliwung the party transferring the rights ever have physical possession of the land at the time of the transfer. Formal documents in the form of old decrees were not verified against the actual facts of possession.

²⁸ Annas, Zahra Zhafirah. "Analisis Yuridis Perbuatan Melawan Hukum dalam Penerbitan Sertifikat Pertanahan Pada Kantor Pertanahan Kabupaten Aceh Besar." *Meukuta Alam: Jurnal Ilmiah Mahasiswa* 7.2 (2025): 215-233.

3. The announcement mechanism, as stipulated in Article 26 of Government Regulation No. 24 of 1997, ideally requires a 30-day public notice posted in an easily accessible location so that interested parties may file objections. In reality, Marja, who has been cultivating the land since 1987, was completely unaware of the application for a SHGB until the dispute arose. The announcement was merely a formality posted on the office or sub-district bulletin board, without any substantive outreach to the party who actually controlled the land.
4. Coordination with the village government: ideally, village officials or the village head should be consulted independently regarding the history of land tenure and potential disputes. In fact, the village government issued a certificate without mentioning Marja's 28-year tenure, and the Land Office relied entirely on the village's documents without conducting an independent cross-check.

The analysis above indicates a dichotomy between formal and substantive power in land disputes. PT. STAR TJEMERLANG holds an advantage in administrative matters through its ownership of a Certificate of Ownership (SHGB), whereas Marja lacks proof of ownership and holds an advantage only in factual terms—namely, continuous possession of the land since 1987. thereby enabling Marja to obtain his rights based on the legal grounds of Article 24(2) of GR 24/1997 on Land Registration, which states:

- (2) "In the event that the evidence referred to in paragraph (1) is not available or is no longer available in its entirety, proof of title may be established based on the fact that the applicant for registration and his or her predecessors in title have been in physical possession of the land in question for 20 (twenty) consecutive years or more,

provided that:"

- (1) "Such possession was exercised in good faith and openly by the person concerned as the rightful owner of the land, and was corroborated by the testimony of a credible witness;"
- (2) "such control, whether prior to or during the announcement referred to in Article 26, is not contested by the relevant customary law community or village/subdistrict, nor by any other party."

Based on the wording of that Article, it can be said that Marja has the opportunity to register her rights, because, in terms of meeting the requirements of that Article, Marja satisfies the criteria specifically, the first requirement of physical possession for 20 consecutive years or more. Marja has been proven to have continuously possessed the land from 1987 until the lawsuit was filed in 2017, meaning it has lasted for 30 years. This is evidenced by witness testimony, the existence of a permanent perimeter wall, and uninterrupted possession by any party. The second requirement is that the possession be carried out in good faith and openly. Marja meets this requirement because she cultivated the land as a source of livelihood and never claimed land belonging to others. Prior to the issuance of the SHGB, no party filed a lawsuit or raised an objection regarding this possession. The third requirement is supported by the testimony of credible witnesses. Marja's possession is corroborated by witness statements during the trial as well as by local village officials. The Supreme Court, in its ruling, also considered these testimonies as the basis for recognizing the right. Furthermore, the fourth requirement is that the possession was not contested by the community or the village before and during the announcement. Marja met this requirement because there were no objections from the village or other parties before the SHGB was issued. Although

the village certificate was not entirely accurate in describing Marja's possession, no party actively contested it.

Mr. Gelar Dwihandaya, S.H., also emphasized that for the validation process of claims of ownership dating back more than 20 years, several documents must be submitted, namely:

- (1) "written statement from the applicant stating the following:"
 - 1) "that the applicant has actually possessed the land in question for 20 years or more consecutively, or has acquired such possession from another party or parties who had previously possessed it, such that the combined period of possession by the applicant and their predecessors amounts to 20 years or more;"
 - 2) "that the acquisition of the land was carried out in good faith;"
 - 3) "that such possession has never been challenged and is therefore considered to be recognized and validated by the relevant customary law community or village/subdistrict;"
 - 4) "that the land is not currently the subject of a dispute;"
 - 5) "that if the statement contains information that is not in accordance with the facts, the signatory agrees to be held liable in court, both criminally and civilly, for providing false information."
- (2) "a statement from the Village Head/Neighborhood Chief and at least 2 (two) credible witnesses, due to their roles as local traditional elders and/or long-term residents of the village/subdistrict where the land in question is located, and who have no family relationship with the applicant up to the second degree, whether by direct or collateral kinship, who confirm the statements made by the applicant in the above declaration, in the form set forth in Attachment 14."

Based on the foregoing, it can be concluded that the issuance of SHGB No. 4817 in the name of PT. Star Tjemerlang does, administratively speaking, meet the formal requirements as stipulated in Article 33 of PMNA/KBPN No. 9 of 1999. However, substantively, the issuance does not fully reflect the actual conditions on the ground, particularly regarding Marja's physical control of the land since 1987. Therefore, this case demonstrates that the implementation of the principle of due diligence by the Bogor Regency Land Office has not been carried out optimally, particularly in the verification of physical data, the investigation of land tenure history, and the synchronization of legal data with factual conditions.

C. Forms of Legal Liability of the Bogor Regency Land Office

The issuance of the SHGB by the Bogor Regency Land Office in the present case has not only given rise to a land ownership dispute, but has also raised questions regarding the legal liability of land officials in the exercise of their authority, as the SHGB was issued for land that had in fact been continuously occupied and cultivated by Marja since 1987, while, on the other hand, the certificate was issued in the name of PT. Star Tjemerlang through the land administration mechanism.

In the land registration system, the Land Office is responsible for ensuring that every issuance of land rights is based on physical and legal data that is accurate, complete, and consistent with on-the-ground conditions.²⁹ This obligation is part of the implementation of the principle of

²⁹ Ramba, V. S., Tehupeiori, A., & Widiarty, W. S. (2024). "Efektivitas Pelaksanaan Pendaftaran Tanah pada Kantor Badan Pertanahan Nasional Kabupaten Luwu Timur Provinsi Sulawesi Selatan." *Action Research Literate*, 8(8), 2327-2342.

prudence, which aims to provide preventive legal protection and legal certainty to prevent the emergence of land disputes in the future.³⁰ Therefore, if, in practice, a certificate is issued for land that has long been in the possession of another party, such action may result in legal liability for the official who issued it.

Based on the facts presented in court, it is known that Marja has been in actual and continuous possession of the disputed land since 1987. This possession should have been a key fact considered during the physical data review and field verification processes prior to the issuance of the SHGB. However, the issuance of the SHGB in the name of PT. Star Tjemerlang indicates that the verification process conducted by the Bogor Regency Land Office was not carried out optimally. This situation reveals a discrepancy between the legal data used in the issuance of the SHGB and the actual physical possession on the ground.

In an interview with Mr. Gelar Dwihandaya, S.H., of the Bogor Regency Land Office, it was explained that “the issuance of the SHGB in the name of PT. Star Tjemerlang was essentially based on the documents required for the initial land registration application. The Land Office stated that if, during the survey or field inspection, objections from other parties were raised or there were signs of physical control by other parties, then the application could not be processed further.” However, according to this statement, when the survey team and Committee A conducted the field inspection, Marja was not present at the location, so the land officials were unaware of her physical control over the land. Marja’s

³⁰ Koswara, D., Fakhriah, E. L., & Haspada, D. (2024). “Konsekuensi Hukum Sertipikat Hak Atas Tanah Ganda Ditinjau Dari Undang Undang No. 5 Tahun 1960 (Uupa) Dan Peraturan Pemerintah No. 24 Tahun 1997 Tentang Pendaftaran Tanah Dikaitkan Dengan Kepastian Hukum”. *Iustitia Omnibus: Jurnal Ilmu Hukum*, 5(2), 91-105.

physical control was only discovered after she filed a lawsuit with the Cibinong District Court and it was subsequently validated by a court decision that has become final and binding (*inkracht van gewijsd*).

Nevertheless, this argument does not automatically absolve the Bogor Regency Land Office of its responsibility to apply the principle of due diligence. This is because field verification in the land registration process must not be limited to formalities; it must also ensure consistency between administrative documents and the actual conditions on the ground. If the land has been under the actual control of another party for decades, such circumstances should be identifiable through a review of the land's history, an inspection of the surrounding area, or clarification from village officials or parties familiar with the history of the land's control.³¹ Therefore, Marja's absence during the on-site inspection cannot be used as a reason to disregard the obligation to conduct a thorough investigation of the land in question.

Mr. Gelar Dwihandaya, S.H.'s statement also indicates that the Land Office emphasizes the importance of the role of village or sub-district governments in issuing Land History Certificates, Certificates of No Dispute, and Certificates of Physical Possession of Land. According to the Land Office, if these documents do not accurately reflect the actual conditions, then the village or sub-district authorities should not certify or sign them. This statement indicates that the land registration process is fundamentally highly dependent on the accuracy of the data provided by the village or sub-district government. However, this dependency does not

³¹ Bustan Ahmad, S. Y. (2024). *Kepastian Hukum Atas Hak Penguasaan Tanah Garapan Oleh Masyarakat Lokal di Kabupaten Polewali Mandar= Legal Certainty of Controlling Rights of Cultivated Land by Local Communities in Polewali Mandar Regency (Doctoral dissertation, Universitas Hasanuddin)*.

absolve the Land Office of its responsibility as the agency with the final authority to conduct research, surveying, verification, and the issuance of land rights.

The legal liability of the Bogor Regency Land Office can be analyzed based on the concept of an unlawful act (PMH). Rosa Agustina states that an Unlawful Act (PMH) must meet several requirements: first, the act must be contrary to the legal obligations of the perpetrator; second, the act must violate the subjective rights of another party; third, it must be contrary to public morality; and fourth, it must be contrary to propriety, diligence, and prudence.³²

With reference to Article 1365 of the Civil Code, which states:

“Any unlawful act that causes harm to another person obligates the person whose fault caused that harm to compensate for it”.

Based on the provisions of the above article, the elements of an unlawful act include the existence of an unlawful act, the existence of fault, the existence of a cause-and-effect relationship or causal link, and the existence of damages. This compensation arises not because of a contract but because of fault.³³

In this case, the elements of an unlawful act, as they relate to the Bogor Regency Land Office, can be outlined as follows:

1. The issuance of a Certificate of Ownership (SHGB) in the name of PT. Star Tjemerlang by the Bogor Regency Land Office;
2. The presence of elements of error or negligence, in the form of inadequate field verification and investigation into the history of land ownership of the

³² Rosa Agustina. (2003). “Perbuatan Melawan Hukum”. *Jakarta: Pasca Sarjana Universitas Indonesia*, Hal. 17

³³ Salim HS. (2008). “Hukum Kontrak Teori Dan Teknik Penyusunan Kontrak”. *Jakarta: Sinar Grafika*, hal.100.

land that Marja has controlled since 1987;

3. The existence of losses, namely the loss of legal certainty for the tenant farmers, as well as other losses arising from protracted disputes that have proceeded through the District Court, the High Court, the Court of Cassation, and the Review Process;
4. The existence of a causal relationship, namely that the dispute and the loss arose as a result of the issuance of the SHGB on land currently under the control of another party.

Given that these elements are satisfied, the administrative action taken by the Bogor Regency Land Office can be classified as an unlawful act by the government (*onrechtmatige overheidsdaad*). In the context of administrative law, land officials are not only responsible for administrative procedures but also for the legal consequences arising from the decisions they issue.

In accordance with the theory of repressive legal protection as applied by legal authorities, under the doctrine of administrative law, government officials whose actions cause harm to citizens may be held accountable through two avenues: a lawsuit filed with the Administrative Court pursuant to Law No. 5 of 1986, or a civil lawsuit for tort filed with the District Court.³⁴ The choice of civil proceedings in this case is justified because the Supreme Court itself, in Decision No. 3626 K/ Pdt/2019, accepted and adjudicated this case within its civil jurisdiction, thereby implicitly affirming the District Court's authority to hear the tort claim against the Bogor Regency Land Agency (BPN) as a co-

³⁴ Bimasakti, M. A. (2022). "Legal Explanation (Restatement) of The Concept of Government Administrative Actions According to Law no. 30 of 2014 Concerning Government Administration". *Jurnal Hukum dan Peradilan*, 11(1), 64-92.

defendant; furthermore, that cassation decision became final after PT Star Tjemerlang’s petition for judicial review was denied via Decision No. 788 PK/Pdt/2021.

On the other hand, following the court decision that has become final and binding (*inkracht van gewijsde*), it has been confirmed that the Head of the West Java Provincial Office of the National Land Agency issued Decision No. 20/Pbt/BPN.32. MP.02.01/III/2025 dated March 18, 2025, regarding the Revocation of Building Use Right No. 4817/Sukahati in the name of PT. Star Tjemerlang. This process requires several steps, namely:

Table 2. Chronology of the Dispute and Legal Actions
(2017–2025)

Stages	Institution / Ruling	Key Points of the Decision / Outcome	Relevance to the Responsibilities of the Land Office
First Lawsuit	Cibinong District Court (Judgment No. 328/Pdt.G/2017/PN.Cbn)	Marja was declared the loser; the SHGB was deemed administratively valid.	Repressive legal protection has not been effective at the first instance.

Bandung	Bandung High Court (Decision No. 102/PDT/2019 /PT.BDG)	Marja lost again; her 20-year plus physical control has yet to be recognized.	Indicates weaknesses in the evidence or insufficient consideration by the appellate court judges.
Appeal	Supreme Court (Decision No. 3626 K/Pdt/2019)	Marja won; the SHGB was declared non-binding/null and void due to its issuance melanggar hak Marja.	Implicitly acknowledges the existence of an unlawful act by the government (<i>onrechtmatige overheidsdaad</i>).
Case Review (PK)	Supreme Court (Decision No. 788 PK/Pdt/2021)	PT Star Tjemerlang's appeal was denied; the Supreme Court's decision is final.	Establishing legal certainty that the SHGB was defective from the outset (<i>retroactively</i>).
Enforcement of the Judgment	Head of the West Java Regional Office of the National Land Agency (Decision No.	SHGB No. 4817/Sukahati has been revoked.	Establish institutional accountability through administrative corrective measures.

	20/Pbt/BPN.3 2.MP.02.01/III/ 2025)		
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Source: Researcher Analysis, 2026

The cancellation was carried out as a direct implementation of the series of decisions: the Cibinong District Court Decision No. 328/Pdt.G/2017/PN.Cbi in conjunction with the Bandung High Court Decision No. 102/PDT/2019/PT.BDG in conjunction with the Supreme Court of the Republic of Indonesia Decision No. 3626 K/Pdt/2019 in conjunction with the Final Review Decision No. 788 PK/Pdt/2021, which has become final and binding (*inkracht van gewijsde*). The cassation decision in favor of Marja serves as the legal basis for the cancellation, and it is final because PT Star Tjemmerlang's Final Review petition has been rejected, meaning no further legal remedies are available. The legal cancellation of the certificate is retroactive³⁵, This means that the SHGB is considered invalid from the time of its issuance, and the land reverts to its original status as it was before the right was granted. Specifically, if the HGB is on state-owned land, the land reverts to state ownership.³⁶ Marja or his heirs may claim rights to the land because it has reverted to state ownership based on more than 20 years of physical possession, which has been recognized and upheld by the Supreme Court.

³⁵ Naibaho, P. G. A. (2025). "Kepastian Hukum Penyelesaian Sengketa Pertanahan Terhadap Tumpang Tindih Sertifikat Hak Milik atas Tanah (Studi Kasus Kantor Pertanahan Kabupaten Simalungun)". (*Doctoral dissertation, Universitas Medan Area*).

³⁶ Suhadi, S., & Niravita, A. (2024). "Urban agrarian reform: opportunities and challenges for land rights among low-income communities". *Legality: Jurnal Ilmiah Hukum*, 32(2), 348-373.

The issuance of the decision to revoke the SHGB indicates that the state, through the National Land Agency, has ultimately acknowledged the existence of legal issues regarding the issuance of the SHGB in the name of PT. Star Tjemmerlang. In other words, the administrative corrective action—namely, the revocation of the certificate—constitutes a form of institutional accountability for the issuance of land rights that had previously led to a protracted dispute. In addition, several of the points outlined above can be categorized as forms of accountability that can be undertaken by the Bogor Regency Land Office, including:

1. Administrative (*institutional*) liability, which was concretely manifested through the issuance of Decision No. 4817/Sukahati revoking the SHGB by the Head of the West Java Regional Office of the National Land Agency on March 18, 2025. This responsibility is based on the implementation of a Supreme Court decision that has become final and binding, as well as Article 75 of Law No. 5 of 1986 on Administrative Courts.
2. Civil liability based on an unlawful act (PMH), which to date has not been realized in the form of explicit compensation. Marja must still file a separate lawsuit to seek recovery of material damages in the amount of Rp2.1 billion, based on Article 1365 of the Civil Code and the doctrine of *onrechtmatige overheidsdaad*.
3. The moral and ethical responsibility implicitly reflected in the act of revoking the certificate itself. However, to date, no personal sanctions have been imposed on officials found to have been negligent in the verification process. This responsibility is grounded in the General Principles of Good Governance (AAUPB), particularly the principle of due diligence in

administrative decision making.

4. The obligation to restore or reinstate rights, which allows Marja to file a new claim with the Bogor Regency Land Office by attaching the Supreme Court decision as evidence of possession for more than 20 years. This mechanism is based on Article 24(2) of Government Regulation No. 24 of 1997 in conjunction with the principle of prudence following the annulment.

Thus, Marja's efforts to seek legal redress regarding the legal liability of the Bogor Regency Land Office in this case are not limited to administrative aspects but also encompass liability for losses arising from the suboptimal application of the principle of due diligence in the issuance of the SHGB. Although a decision to revoke the SHGB has been issued as a form of administrative accountability, this revocation has not fully restored Marja's rights in their entirety. Marja must still file a new application for land rights with the Bogor Regency Land Office, attaching the final and binding court decision as the basis for the recognition of her rights. Furthermore, the material losses resulting from the termination of the cooperation with the housing developer, amounting to Rp2.1 billion as stated in the complaint's statement of facts, were not explicitly addressed in the cassation ruling's disposition; thus, the recovery of these economic losses must be pursued through separate legal mechanisms. This situation indicates that efforts to strengthen repressive legal protection regarding legal liability mechanisms within Indonesia's land system still require reinforcement, particularly in providing more effective, swift, and comprehensive remedies for those harmed by administrative negligence. Therefore, improvements are needed in both preventive and repressive legal protection efforts, particularly regarding field verification, investigation.³⁷

D. Conclusion

³⁷ Rahmawati, N. (2022). "Pendaftaran Tanah Berbasis Desa Lengkap". *Tunas Agraria*, 5(2), 127-141.

The issuance of SHGB No. 4817/Sukahati in the name of PT. Star Tjemerlang by the ATR/BPN Land Office of Bogor Regency has been shown to have failed to apply the principle of due diligence in an optimal manner. Although formal requirements were met, physical verification and a review of the land tenure history were not conducted substantively, thereby disregarding the fact that Marja and his predecessors have continuously occupied the 3,338 m² plot of land since 1987, as protected under GR 24/1997. The discrepancy between the legal data and on-the-ground conditions including the presence of a permanent wall that was overlooked during the inspection demonstrates a weak application of the principle of due diligence, while the 30-day public notice mechanism was merely a formality without any substantive outreach to the parties who actually control the land.

These administrative actions satisfy all the elements of an unlawful act under Article 1365 of the Civil Code and are therefore classified as an *onrechtmatige overheidsdaad*, giving rise to institutional liability and resulting in the retroactive revocation of the SHGB through Decision No. 20/Pbt/2025, which states that the certificate was defective from the time of its issuance in 2009. However, the restoration of rights has not yet been fully effective because landowners must still undergo new administrative procedures, and material losses have not been fully compensated. Therefore, this study recommends strengthening multi-layered field verification, tighter synchronization of physical and legal data, and substantive coordination with village governments prior to the issuance of land rights, to prevent the recurrence of similar land disputes in the future.

E. References

Achmad, A. (2002). *Hukum Pertanahan, Pemberian Hak Atas*

- Tanah Negara, Sertifikat dan Permasalahan. *Jakarta: Prestasi Pustaka*.
- Adrian Sutedi, S. H. M. H. (2023). *Sertifikat hak atas tanah*. Sinar Grafika.
- Annas, Zahra Zhafirah. "Analisis Yuridis Perbuatan Melawan Hukum dalam Penerbitan Sertifikat Pertanahan Pada Kantor Pertanahan Kabupaten Aceh Besar." *Meukuta Alam: Jurnal Ilmiah Mahasiswa* 7.2 (2025): 215-233.
- Bimasakti, M. A. (2022). "Legal Explanation (Restatement) of The Concept of Government Administrative Actions According to Law no. 30 of 2014 Concerning Government Administration." *Jurnal Hukum dan Peradilan*, 11(1), 64-92.
- Bustan Ahmad, S. Y. (2024). "Kepastian Hukum Atas Hak Penguasaan Tanah Garapan Oleh Masyarakat Lokal di Kabupaten Polewali Mandar= Legal Certainty of Controlling Rights of Cultivated Land by Local Communities in Polewali Mandar Regency" (*Doctoral dissertation, Universitas Hasanuddin*).
- Damantu, S., & Arief, M. (2025). "Gerakan Sosial Masyarakat: Aksi Kolektif Masyarakat Desa Lembobelala Dalam Menolak Klaim Lahan Oleh PT. Perkebunan Nusantara XIV." *Journal of Reiventing*, 3(1)
- Fakhrurrozi, M., Rahmatiar, Y., & Abas, M. (2025). "Kajian Hukum Tata Negara Terhadap Perlindungan Hak Atas Tanah Dalam Konteks UU No. 5 Tahun 1960." *Morality: Jurnal Ilmu Hukum*, 11(1), 148-157.
- Florianus SP Sangsun. (2007) *Tata Cara Mengurus Sertipikat Tanah Jakarta: Visimedia*.
- Gozali, D. S. (2025). "Perlindungan Hukum Pembeli Yang Beritikad Baik Dalam Praktik Jual Beli Tanah di Bawah Tangan." *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, 3(3), 2727-2736.
- Huberman, A. M., & Miles, M. B. (2014). *Analisis Data Kualitatif: Buku Sumber tentang Metode-metode Baru*. (T. R. Rohidi, Penerj.). Jakarta: UI Press.
- Indonesia. *Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek)*. Diterjemahkan oleh R. Subekti dan R. Tjitrosudibio. Jakarta: PT Balai Pustaka, 2014.

- Indonesia. Menteri Negara Agraria/Kepala Badan Pertanahan Nasional. *Peraturan Menteri Negara Agraria/Kepala Badan Pertanahan Nasional tentang Tata Cara Pemberian dan Pembatalan Hak Atas Tanah Negara dan Hak Pengelolaan*. Peraturan Menteri Negara Agraria/Kepala BPN Nomor 9 Tahun 1999.
- Indonesia. *Peraturan Pemerintah tentang Hak Pengelolaan, Hak Atas Tanah, Satuan Rumah Susun, dan Pendaftaran Tanah*. PP Nomor 18 Tahun 2021.
- Indonesia. *Peraturan Pemerintah tentang Pendaftaran Tanah*. PP Nomor 24 Tahun 1997.
- Indonesia. *Undang-Undang tentang Peraturan Dasar Pokok-Pokok Agraria*. UU Nomor 5 Tahun 1960.
- Karim, M. P., Dungga, W. A., & Mantali, A. R. Y. (2023). "Akibat Hukum dari Diterbitkannya Sertifikat Tanah dengan Kepemilikan Ganda." *Journal of Comprehensive Science (JCS)*, 2(6).
- Kementerian Agraria dan Tata Ruang/Badan Pertanahan Nasional. (2026, April 6). *Ingin sertipikatkan tanah untuk pertama kali secara mandiri, lengkapi syarat berikut*. ATR/BPN.
<https://www.atrbpn.go.id/berita/ingin-sertipikatkan-tanah-untuk-pertama-kali-secara-mandiri-lengkapi-syarat-berikut>
- Koswara, D., Fakhriah, E. L., & Haspada, D. (2024). "Konsekuensi Hukum Sertipikat Hak Atas Tanah Ganda Ditinjau Dari Undang Undang No. 5 Tahun 1960 (Uupa) Dan Peraturan Pemerintah No. 24 Tahun 1997 Tentang Pendaftaran Tanah Dikaitkan Dengan Kepastian Hukum." *Iustitia Omnibus: Jurnal Ilmu Hukum*, 5(2), 91-105.
- Kusuma, R. B. (2025). "Kepastian Hukum Bagi Pihak Ketiga Beritikad Baik Dalam Sengketa Kepemilikan Tanah." *Jurnal Sains, Ekonomi, Manajemen, Akuntansi dan Hukum*, 2(5), 437-449.
- [Mahkamah Agung Republik Indonesia. Putusan Nomor 3626 K/Pdt/2019.](#)
- [Mahkamah Agung Republik Indonesia. Putusan Peninjauan Kembali Nomor 788 PK/Pdt/2021.](#)

- Marzuki, P. M. (2005). *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group.
- Maulana, A., & Hutagalung, H. (2025). "Reformasi pengelolaan tanah dalam sistem hukum agraria di Indonesia: Tantangan dan solusi untuk mewujudkan keadilan sosial dan keberlanjutan." *Jurnal Ilmu Multidisiplin*, 3(1), 245-256.
- Moleong, L. J. (2017). *Metodologi Penelitian Kualitatif*. Bandung: Remaja Rosdakarya.
- Naibaho, P. G. A. (2025). "Kepastian Hukum Penyelesaian Sengketa Pertanahan Terhadap Tumpang Tindih Sertifikat Hak Milik atas Tanah (Studi Kasus Kantor Pertanahan Kabupaten Simalungun)." (*Doctoral dissertation, Universitas Medan Area*).
- Padhilla, Risma Retianti, and Asmarani Ramli. "Perlindungan Hukum antara Pendaftar Pertama dengan Pembeli Beritikad Baik Pada Aspek Kepastian Hukum dalam Sengketa Sertipikat Ganda." *Bookchapter Hukum dan Lingkungan* 1 (2025): 1541-1572.
- [Pengadilan Negeri Cibinong. Putusan Nomor 328/Pdt.G/2017/PN.Cbn.](#)
- [Pengadilan Tinggi Bandung. Putusan Nomor 102/PDT/2019/PT.BDG.](#)
- Philipus M. Hadjon. (1987) *Perlindungan Hukum bagi Rakyat Indonesia*. Surabaya: Bina Ilmu, hal 29-30
- Pransisto, J. (2023). "Analisis Yuridis Pengolahan Data Fisik dan Yuridis Dalam Pendaftaran Tanah Menurut PP No 24 Tahun 1997 di Kantor Pertanahan Kabupaten Maros." *Jurnal Litigasi Amsir*, 219-238.
- Purba, G. A. G., & Primantari, A. A. A. (2025). "Sertifikat Ganda dalam Sengketa Tanah: Tinjauan Hukum Validitas Sertifikat Hak Milik dalam Sistem Pertanahan Nasional." *Jurnal Media Akademik (JMA)*, 3(10).
- Rahmansyah, R. (2025). "Prinsip Kehati-Hatian Penerbitan Sertifikat Hak Milik oleh Kantor Agraria dan Tata Ruang Badan Pertanahan Nasional Kabupaten Asahan." *Citra Justicia: Majalah Hukum dan Dinamika Masyarakat*, 26(2), 142-151.
- Rahmawati, N. (2022). "Pendaftaran Tanah Berbasis Desa

- Lengkap." *Tunas Agraria*, 5(2), 127-141.
- Ramba, V. S., Tehupeiry, A., & Widiarty, W. S. (2024). "Efektivitas Pelaksanaan Pendaftaran Tanah pada Kantor Badan Pertanahan Nasional Kabupaten Luwu Timur Provinsi Sulawesi Selatan." *Action Research Literate*, 8(8), 2327-2342.
- Resa, M., Prakoso, K. P., Aqsa, M. A., Arip, A. F. R., Putra, M. E. E., & Mubarak, A. (2024). "Tinjauan Hukum Agraria dalam Implementasi Surat Hak Guna Bangunan di Batam Kepulauan Riau." *Almufi Jurnal Sosial dan Humaniora*, 1(2), 98-106.
- Rosa Agustina. (2003). Perbuatan Melawan Hukum. *Jakarta: Pasca Sarjana Universitas Indonesia*, Hal. 17
- Rosidi, A., Listyaningrum, N., Suryaningsih, B. N. A. D., & Asmawardhani, D. (2026). *Metode Penelitian Hukum Normatif dan Empiris*. CV. Insight Media.
- Salim HS. (2008). Hukum Kontrak Teori Dan Teknik Penyusunan Kontrak. *Jakarta: Sinar Grafika*, hal.100.
- Saputri, M. R., Aswadi, K., & Mauludin, N. A. (2024). "Tanggung Jawab Badan Pertanahan Nasional Terhadap Perbedaan Data Fisik Di Sertifikat Dengan Di Lapangan (Studi Kasus Di Kantor Pertanahan Kabupaten Lombok Barat)." *Unizar Recht Journal (URJ)*, 3(3), 492-502.
- Sasmita, A. A., Hafidz, M. R., & Khalid, H. (2022). "Penerapan Prinsip Kehati-Hatian Terhadap Pendaftaran Hak Milik Atas Tanah Sebagai Upaya Mencegah Terbitnya Setipikat Ganda." *Journal of Lex Generalis (JLG)*, 3(5), 1139-1158.
- Simarmata, Y. S. (2021). "Kedudukan hukum pihak yang menguasai objek hak atas tanah terkait proses peralihan hak yang belum sempurna." *Indonesian Notary*, 3(2), 8.
- Sitohang, H. J., & Silviana, A. (2024). "Penyelesaian Sengketa Tanah Garapan dengan Status Tanah Belum Bersertifikat". *Notarius*, 17(3), 1883-1901.
- Soekanto, S. (1986). Pengantar Penelitian Hukum. Jakarta: UI Press.
- Sudradjat, A. (2024). "Government Regulation Number 24 of

- 1997 Concerning Land Registration in Implementation and Problems at Regency/City National Land Agency Offices." *JILPR Journal Indonesia Law and Policy Review*, 6(1), 13-21.
- Suhadi, S., & Niravita, A. (2024). "Urban agrarian reform: opportunities and challenges for land rights among low-income communities". *Legality: Jurnal Ilmiah Hukum*, 32(2), 348-373.
- Tarfi, A & Amri, I. (2021). "Reforma Agraria sebagai Jalan Menuju Perdamaian yang Berkelanjutan di Aceh, Bhumih." *Jurnal Agraria dan Pertanian*, 7 (2), 210-225.
- Wahanisa, R., Suhadi, S., & Fibrianti, N. (2010). "Sosialisasi Pentingnya Kepemilikan Sertifikat Tanah Sebagai Bukti Penguasaan Hak Milik Atas Tanah Berdasar Pp No. 24 Tahun 1997 Tentang Pendaftaran Tanah Di Desa Jetis Kecamatan Bandungan Kabupaten Semarang". *Jurnal Abdimas*, 14(2).
- Wati, D. P. (2025). "Akibat Hukum Sertifikat Ganda Terhadap Kepastian Hukum Dalam Menjamin Kepastian dan Perlindungan Hukum Bagi Hak Milik Tanah." *Jurnal Media Akademik (JMA)*, 3(11).
- Zulfi, H. R. (2026). "Perlindungan Hukum Bagi Aparatur Sipil Negara Melalui Mekanisme Pengadilan Tata Usaha Negara." *Jurnal Reformasi Hukum: Cogito Ergo Sum* 9(1), 35–43.

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