

# **Reform of the Land Registration System in Indonesia: A Max Weberian Rational-Legal Bureaucracy Approach**

Abdul Wahid <sup>a✉</sup>, I Gusti Ayu Ketut Rachmi Handayani <sup>a</sup>,  
Lego Karjoko <sup>a</sup>

<sup>a</sup> Faculty of Law, Universitas Sebelas Maret

✉ Corresponding email: [abdul.wahid@student.uns.ac.id](mailto:abdul.wahid@student.uns.ac.id)

## **Abstract**

Social transformation and the increasing economic value of land in Indonesia have intensified the demand for legal certainty in land rights. Although Law Number 5 of 1960 introduced land registration to provide legal protection through certification, the prevailing negative publication system with positive elements remains problematic. It fails to ensure state responsibility for certificate accuracy, even when acquired in good faith, thus posing risks of legal uncertainty and agrarian conflict. This study analyzes the rationale for transitioning to a pure positive publication system using Max Weber's rational-legal bureaucracy theory, emphasizing formal procedures, predictability, and administrative accountability. Employing normative legal research with conceptual, statutory, comparative, and historical approaches, this study draws from secondary legal materials analyzed through legal



Copyrights © Author(s). This work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International License. (CC BY-SA 4.0). All writings published in this journal are personal views of the author and do not represent the views of this journal and the author's affiliated institutions.

interpretation and the Weberian framework. The findings reveal that a positive publication system better aligns with Weberian principles and supports legal certainty. This reform is essential for enhancing land administration legitimacy and promoting inclusive, accountable agrarian governance in Indonesia.

**KEYWORDS** *Bureaucratic, land registration, positive publication system, Rationality*

## I. Introduction

In the past, when customary law governed community life, there was no obligation to register land ownership. Land ownership was socially recognized through limited interactions and marked by simple natural indicators such as trees or stones. However, with the establishment of the Republic of Indonesia and the rapid development of society, land ownership became increasingly complex<sup>1</sup>. The need for legal certainty over land rights has grown urgent, given the increasing economic value of land and the potential for disputes<sup>2</sup>. These changes in social structure and development demands have prompted the state to establish a legal

---

<sup>1</sup> The need to own land has become a necessity, both for residential purposes and economic activities. Every issue related to land impacts various aspects of life. On the other hand, the limited availability of land creates increasing pressure due to the continuously growing population. The demand for land for housing, infrastructure, and industry is encroaching on agricultural land and forests. These changes are among the primary challenges faced by the Indonesian nation. D A Mujiburrohmah, 'Menyoal Penafsiran Tanah Telantar', *Jurnal Yudisial*, 11.1 (2018), 1–22.

<sup>2</sup> Grzegorz Mikusiński and Krzysztof Niedziałkowski, 'Perceived Importance of Ecosystem Services in the Białowieża Forest for Local Communities Does Proximity Matter?', *Land Use Policy*, 97 (2020), 104667.

system capable of ensuring legal certainty and protection for land rights.<sup>3</sup>

Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA) was enacted to resolve the dualism in agrarian law after independence, between colonial legal remnants and customary law. The UUPA introduced the principle of agrarian legal unity and mandated land registration as a means of ensuring legal certainty for land rights holders. Land registration aims to produce written, complete, and clear juridical and physical data through the issuance of certificates, which are recognized as strong legal evidence. This research aims to examine the rationale behind the implementation of a positive publication system in Indonesia's land registration as an effort to achieve legal certainty over land ownership certificates.<sup>4</sup>

The fundamental legal issue in Indonesia's land registration system lies in its application of a negative publication system with positive tendencies, whereby the state does not guarantee the validity of the information in the certificate, even when it is acquired in good faith. This results in legal uncertainty, particularly in land disputes. A certificate, which should provide legal certainty, can be invalidated due to the weaknesses of the negative publication system. This creates high agrarian conflict risks, especially among vulnerable communities with limited administrative capacity. Other contributing factors include poor land administration, overlapping regulations, land mafia interference, inconsistent legal interpretations, and weak law enforcement commitment.

---

<sup>3</sup> Agung Wibowo and Lukas Giessen, 'Absolute and Relative Power Gains among State Agencies in Forest-Related Land Use Politics: The Ministry of Forestry and Its Competitors in the REDD+ Programme and the One Map Policy in Indonesia', *Land Use Policy*, 49 (2015), 131–41.

<sup>4</sup> Justyna Wójcik-Leń and others, 'Studies Regarding Correct Selection of Statistical Methods for the Needs of Increasing the Efficiency of Identification of Land for Consolidation A Case Study in Poland', *Land Use Policy*, 87 (2019), 104064.

This research has both theoretical and practical significance. Theoretically, it contributes to the development of agrarian law by incorporating an interdisciplinary approach using Max Weber's bureaucratic theory to evaluate the publication system in land registration. Practically, the study serves as a foundation for policymakers and government institutions to consider reforming current regulations and adopting a more positive-oriented publication system that ensures stronger legal protection for land rights. Reforming the land registration system is crucial for promoting fair, accountable, and inclusive land governance in support of national development.

This research has both theoretical and practical significance. Theoretically, it contributes to the development of agrarian law by incorporating an interdisciplinary approach using Max Weber's bureaucratic theory to evaluate the publication system in land registration. Practically, the study serves as a foundation for policymakers and government institutions to consider reforming current regulations and adopting a more positive-oriented publication system that ensures stronger legal protection for land rights. Reforming the land registration system is crucial for promoting fair, accountable, and inclusive land governance in support of national development<sup>5</sup>.

This study aims to answer two fundamental legal questions: What is the theoretical basis for shifting to a positive publication system within the framework of Indonesian land registration when examined through Max Weber's bureaucratic theory?. The scientific novelty of this study lies in its interdisciplinary approach, which combines doctrinal legal analysis with Max Weber's sociological bureaucratic theory. Weber's theory emphasizes the role of formal procedures, legal predictability, and hierarchical

---

<sup>5</sup> Maria Rosaria Sessa, Alessio Russo, and Francesco Sica, 'Opinion Paper on Green Deal for the Urban Regeneration of Industrial Brownfield Land in Europe', *Land Use Policy*, 119 (2022), 106198.

accountability as the foundation for modern rational-legal authority. While existing research has largely focused on the administrative or technical aspects of land registration, this study introduces a new analytical dimension by aligning land registration reform with the principles of rational-legal bureaucracy. The proposed shift to a positive publication system is examined as a legal reform and an institutional rationalization aimed at strengthening legal certainty and public trust.

This study uses a normative legal research method, which focuses the analysis on legal norms as the main object of study. Normative legal research aims to understand law in abstracto, namely, law as written in laws and regulations (law in books), not as applied in practice<sup>6</sup>. This approach is very relevant to studying the legal system, principles, and legal principles, especially in evaluating the rationality of the land registration publication system based on legal certainty and bureaucratic theory<sup>7</sup>. This study adopts conceptual, legislative, comparative, and historical approaches. The conceptual approach is used to examine the main legal ideas, such as the principle of legal certainty, the publication system in land registration, and the theoretical foundations of Max Weber's bureaucratic theory<sup>8</sup>. The legislative approach focuses on the analysis of relevant regulations in Indonesia, such as Law Number 5 of 1960, Government Regulation Number 24 of 1997, and Number 18 of 2021. The comparative approach is used to compare the Indonesian land registration publication system with other jurisdictions that adopt a positive publication system. The historical approach examines the evolution of land law from customary law to the national legal system<sup>9</sup>. The main data sources

---

<sup>6</sup> Brian Z Tamanaha, *Law as a Means to an End: Threat to the Rule of Law* (Cambridge University Press, 2006), III.

<sup>7</sup> Peter Mahmud Marzuki, 'Penelitian Hukum Edisi Pertama', *Jakarta: Kencana Perdana Media Group*, 2005.

<sup>8</sup> Max Weber, *Economy and Society: A New Translation* (Harvard University Press, 2019).

<sup>9</sup> Jimly Asshiddiqie, 'Pengantar Ilmu Hukum Tata Negara', 2011.

in this normative legal research consist of secondary legal materials, including laws and regulations, court decisions, legal doctrines, and academic literature. Legal materials are classified into three categories: primary legal materials (statutes, government regulations, and court decisions), secondary legal materials (legal commentaries, textbooks, and research articles), and tertiary legal materials (legal dictionaries and encyclopedias). These three types of materials are used to build a doctrinal and theoretical framework to support the analysis<sup>10</sup>.

Data collection is carried out through documentary studies, namely by systematically examining legal texts, court decisions, and authoritative legal commentaries.<sup>11</sup> This technique allows researchers to explore the normative content of legal rules, trace the consistency of interpretation over time, and identify doctrinal developments. This documentary study ensures that the legal data used is relevant, credible, and has authority in normative legal research.<sup>12</sup> Data analysis was conducted through prescriptive and evaluative legal analysis, namely by systematically compiling legal norms, interpreting legal provisions through legal reasoning, and evaluating synchronization between legal instruments.<sup>13</sup> The legal interpretation methods used include grammatical, systematic, teleological, and historical interpretations to assess the legal certainty aspect of the publication system in land registration. Furthermore, qualitative-normative analysis was applied to align legal findings with the theoretical framework of Max Weber's bureaucratic model.

---

<sup>10</sup> Terry Hutchinson and Nigel Duncan, 'Defining and Describing What We Do: Doctrinal Legal Research.', *Deakin Law Review*, 17.1 (2012), 83–119.

<sup>11</sup> Soerjono Soekanto and Sri Mamudji, 'Penelitian Hukum Normatif Suatu Tinjauan Singkat, Cet. 16', *Rajawali Pers, Jakarta*, 2014.

<sup>12</sup> Andrew Knight and Les Ruddock, *Advanced Research Methods in the Built Environment* (John Wiley & Sons, 2009).

<sup>13</sup> Johnny Ibrahim, 'Teori Dan Metodologi Penelitian Hukum Normatif', *Malang: Bayumedia Publishing*, 57 (2006), 295.

## II. Publication System in Land Registration

The negative publication system in the context of land registration refers to a legal mechanism in which a land right is considered valid and legally enforceable without requiring prior public announcement or publication. In other words, land rights registration does not need to be announced or published extensively to the public, and third parties are deemed to have known the status of the land negatively, meaning there are no objections or claims from other parties that are published. This has implications for faster and more efficient protection of land rights because it does not have to go through a lengthy publication process. This system emphasizes the principle of privacy and internal legal certainty over land ownership. Philosophically, the negative publication system prioritizes the presumption of validity of registration documents that have been registered without intensive external proof.<sup>14</sup>

The main characteristic of the negative publication system is the absence of an obligation to make a wide announcement or notification regarding the status of registered land rights. In addition, this system tends to provide high evidentiary power to land registration documents, so that registered rights are difficult to challenge by third parties unless there is strong evidence showing legal defects in the registration.<sup>15</sup> Another characteristic is the relatively short administrative process, minimizing the risk of long and complicated land conflicts. This system is also usually

---

<sup>14</sup> Farida Patittingi and others, 'The Comparison of Positive and Negative Publication System on Land Registration in Indonesia', *Pt. 2 J. Legal Ethical & Regul. Issues*, 24 (2021), 1.

<sup>15</sup> Agus Suhariono and others, 'Sistem Publikasi Pendaftaran Tanah (Kajian Sistem Publikasi Negatif Bertendensi Positif)', *Notaire*, 5.1 (2022).

followed by strict legal rules regarding cancellation or reversal of proof to avoid disputes.<sup>16</sup>

The concept of a negative publication system is based on two main principles, namely legal certainty and protection of the rights of registered owners. In this system, land registration serves as the main, valid, and final evidence of land ownership. This concept is different from the positive publication system, which requires an announcement and a waiting period for third parties to file objections to the registration. Thus, the negative publication system reduces formal procedures and transaction costs and speeds up the land registration process. This system is very effective in countries that have a high level of trust in land registration institutions and a strong legal system in enforcing ownership rights.<sup>17</sup>

The bureaucratic flow in the negative publication system begins with the land rights applicant submitting a registration application to the land registration agency (usually the National Land Agency or a similar agency). After the administrative files are complete and a formal examination has been carried out, the agency immediately issues a land rights certificate without having to make a publication announcement first. This certificate then becomes proof of legal and final ownership. The next process is registration at the land registration office without a long waiting period for the announcement. If a third party feels aggrieved, they must prove their claim in court within a certain period after the certificate is issued. This system reduces the possibility of

---

<sup>16</sup> Putu Astika Yasa and I Nyoman Bagiastra, 'Kedudukan Sertipikat Hak Atas Tanah Terkait Berlakunya Sistem Publikasi Negatif Di Indonesia', *Udayana Master Law Journal*, 10.4 (2021), 827–40.

<sup>17</sup> Iroaganachi Nneoma, Joseph Ufere Kalu, and Jatau Abigail Francis, 'Effect of Land Title Registration on Land Sales and Professionals' Satisfaction', *African Scholar Journal of Environmental Design & Construction Mgt.(JECM-4)*, 22.4 (2021), 33–46.

overlapping ownership that is not immediately known before the certificate is issued.<sup>18</sup>

Although the negative publication system offers the advantage of administrative efficiency and internal legal certainty over land ownership, it also has several significant weaknesses:

First, it has the potential to ignore the rights and interests of third parties who may not have had the opportunity to file objections or claims to the land before registration. Because there is no broad publication process or waiting period for announcements, land ownership conflicts may only be revealed after the certificate has been issued, giving rise to disputes that are difficult to resolve administratively. This can lead to injustice, especially for communities or individuals who have little access to information or are unaware of the negative land registration<sup>19</sup>.

Second, the negative publication system is highly dependent on the integrity and accuracy of data in the land registration system. If there is an administrative error, corruption, or data manipulation at the registration stage, then the wrong land rights can be legally registered and difficult to cancel, because of the principle of presumption of validity inherent in this system. This can weaken legal protection for the injured parties and create distrust in the land system as a whole.<sup>20</sup>

Third, from the perspective of public participation and transparency, the negative publication system is relatively unresponsive. Because there is no open announcement mechanism and no time limit for third parties to file objections, public access to information on land status is limited. This can hinder public

---

<sup>18</sup> Sari Nitiyudo, 'Regulasi Ideal Pendaftaran Tanah Terhadap Bukti Sertipikat Yang Berbasis Kepastian Hukum' (Universitas Islam Sultan Agung, 2023).

<sup>19</sup> Benito Arruñada and Nuno Garoupa, 'The Choice of Titling System in Land', *The Journal of Law and Economics*, 48.2 (2005), 709–27.

<sup>20</sup> Raymond Talinbe Abdulai and Edward Ochieng, 'Land Registration and Landownership Security: An Examination of the Underpinning Principles of Registration', *Property Management*, 35.1 (2017), 24–47.

involvement in the land registration process, which ultimately contributes to potential conflict and miscommunication at the community level. This system tends to be more top-down and centralized, so it does not support the principles of good governance in land management.<sup>21</sup>

Fourth, this system can prolong the settlement of land disputes through the courts because third-party objections can only be filed after the certificate is issued. Disputes that cannot be resolved at the administrative level have the potential to burden the courts and slow down the resolution of land conflicts, which is contrary to the original purpose of this system, namely to provide legal certainty quickly. Therefore, reliance on litigation mechanisms is often the final solution in a negative publicity system, which increases the cost and time to resolve land problems.<sup>22</sup>

**Table. 1**  
**Weaknesses of The Negative Publication System**

No.	Weakness	Brief Explanation
1.	Neglect of third-party rights	The absence of public notice mechanisms prevents third parties from filing objections before the issuance of the land certificate.
2.	Vulnerability to administrative errors	The presumption of validity attached to certificates causes registration errors to become

<sup>21</sup> Andi Batari Anindhita, Farida Patittingi, and Chalis Al Rossi, 'Perbandingan Sistem Publikasi Positif Dan Negatif Pendaftaran Tanah: Perspektif Kepastian Hukum', *Amanna Gappa*, 2021, 106–13.

<sup>22</sup> Irsyad Surawirawan and Martin Roestamy, 'Pengaruh Penerapan Stelsel Negatif Terhadap Duplikasi Kepemilikan Tanah Dikaitkan Dengan Pengembangan Perumahan Bagi Masyarakat', *Jurnal Living Law*, 8.1 (2016), 73–81.

		legally binding and difficult to revoke.
3.	Lack of transparency and public participation	Without a publication process, access to land information is limited, hindering public involvement and potentially causing misinformation at the community level.
4.	Increased burden on judicial institutions	Disputes arising from erroneous registrations must be settled through the court system, as administrative remedies are no longer available after the certificate is issued.

The positive publication system in land registration is a mechanism in which the state guarantees the truth of the legal and physical data listed in the land certificate. In this system, the issued certificate is considered absolute proof of ownership, and third parties cannot challenge its validity. The state is fully responsible for the validity of the recorded information, thus providing high legal certainty for rights holders. This system is widely applied in countries such as Germany, Switzerland, and Australia.<sup>23</sup> The main characteristics of a positive publication system include: (1) the use of a registration of title system in which the state guarantees the accuracy of the registered data; (2) the certificates issued have absolute legal force and cannot be challenged; (3) absolute legal protection for third parties who acquire land rights in good faith; and (4) compensation for parties who are harmed due to registration errors. This system requires an active role from registration officials in verifying data before certificates are

---

<sup>23</sup> Patittingi and others.

issued.<sup>24</sup> The basic concept of the positive publication system is that land registration is not just an administrative record, but rather a legal recognition of ownership. The state guarantees that the data recorded in the land book is correct and valid, thus providing high legal certainty for rights holders and third parties. This concept aims to reduce land disputes and increase public trust in the land system.<sup>25</sup>

The bureaucratic flow in the positive publication system begins with the submission of a registration application by the applicant, followed by verification of legal and physical data by the registration officer. After the data is declared valid, the certificate is issued and recorded in the land book. This process takes longer and costs more than the negative publication system, because it requires thoroughness and in-depth verification by the registration officer.<sup>26</sup> Although it provides high legal certainty, the positive publication system has several weaknesses. First, the registration process that requires in-depth verification causes high time and cost. Second, if there is a registration error, the original owner who is harmed finds it difficult to reclaim their rights, because the certificate is considered absolute evidence. Third, this system can reduce the role of the court in resolving land disputes, because administrative decisions are considered final.<sup>27</sup>

## Table. 2

---

<sup>24</sup> Suharno Suharno, Haryo Budhiawan, and Muh Arif Suhattanto, 'Identifikasi Permasalahan Proses Pendaftaran Tanah Dan Upaya Perbaikannya Dalam Rangka Percepatan Proses Pendaftaran Tanah Di Indonesia (Studi Khusus Kantor Pertanahan Di Lingkungan Kanwil Kementerian Agraria Dan Tata Ruang/BPN Provinsi Jawa Timur)', 2016.

<sup>25</sup> Nadila Maysila Herdarezki, 'Sistem Publikasi Tanah Positif (Terobosan Mewujudkan Kepastian Hukum Dalam Pendaftaran Tanah)', *Jurnal Pertanahan*, 11.2 (2021).

<sup>26</sup> Arifin Bur and Desi Apriani, 'Sertifikat Sebagai Alat Pembuktian Yang Kuat Dalam Hubungannya Dengan Sistem Publikasi Pendaftaran Tanah, UIR Law Review' (UIR Press, Pekanbaru.(sdh dibaiki), 2017).

<sup>27</sup> Herdarezki.

### Weaknesses of the positive publication system

No.	Weakness	Brief Explanation
1.	Complex and time-consuming bureaucratic process	Due to the need for thorough verification of legal and physical data, the process of issuing land certificates tends to be slower.
2.	High administrative costs	The extensive verification and technical procedures involved lead to higher registration and operational costs.
3.	Difficulty in restoring ownership rights for original landowners	If a registration error occurs, the original owner faces significant challenges in reclaiming their rights due to the certificate's absolute legal authority.
4.	Reduced role of judicial institutions	The certificate is considered legally final and conclusive, which limits the ability to bring disputes before the courts for legal review.

## III. Legal Problems in Mixed Publication System

Environmental The land registration system in Indonesia adopts a negative publication system with a positive tendency, known as a mixed system.<sup>28</sup> In this system, land certificates are considered strong but not absolute evidence, so they can be sued by third

<sup>28</sup> Nurul Azisah, 'Sistem Pendaftaran Tanah Di Indonesia Dalam Perspektif Hukum Administrasi Negara', *Jurnal Ilmu Hukum Aktualita*, 1.2 (2024), 71–85.

parties who feel they have rights to the land.<sup>29</sup> This creates legal uncertainty for land certificate holders because the registered ownership can still be questioned. According to Boedi Harsono, this system causes legal uncertainty because the state does not guarantee the accuracy of the data presented in the land certificate.<sup>30</sup>

This legal uncertainty also affects land buyers in good faith. Even though they have obtained a certificate, buyers must still prove that the transaction was carried out in good faith and without knowing that there was a legal defect in the land object. This makes it difficult for buyers because of the additional burden of proof outside of the certificate they have. In practice, buyers in good faith are often disadvantaged because the certificate they obtained can be canceled if there is a legal defect in the registration process.<sup>31</sup>

This mixed system also contributes to the high number of agrarian disputes in Indonesia. Land certificates that should provide legal certainty can be canceled by third parties who claim to have rights to the land. The cancellation of this certificate can be done through a court decision or an administrative decision if there is a proven legal defect in the issuance process. This shows that land certificates do not always provide strong legal protection for their holders, thus increasing the potential for agrarian disputes. A concrete example of this problem can be seen in Supreme Court Decision Number 976 K/Pdt/2015, where a dispute occurred between Liem Teddy and Kodam III/Siliwangi regarding land

---

<sup>29</sup> Helena Albright Sitompul, 'Permasalahan Sengketa Kepemilikan Dengan Alas Hak Surat Keterangan Riwayat Tanah (SKT) Serta Akibat Bagi Pemegangnya', *UNES Law Review*, 6.2 (2023), 5956–65.

<sup>30</sup> Desi Apriani and Arifin Bur, 'Kepastian Hukum Dan Perlindungan Hukum Dalam Sistem Publikasi Pendaftaran Tanah Di Indonesia', *Jurnal Bina Mulia Hukum*, 5.2 (2021), 220–39.

<sup>31</sup> Opan Satria Mandala, Ana Rahmatyar, and Muhammad Saparudin Efendi, 'Konstruksi Perlindungan Hukum Untuk Pembeli Tanah Beritikad Baik: Analisis Dan Solusi Praktis Construction Of Legal Protection For Good Faith Land Buyers: Analysis And Practical Solutions'.

ownership with dual certificates.<sup>32</sup> The Supreme Court ruled that the certificate issued earlier had stronger legal force, so the certificate issued later was declared invalid. This case shows that

---

<sup>32</sup> About the duplicate certificates, the Supreme Court (MA) thinks that if there are two or more certificates for the same land, then the certificate that is valid and legally binding is the certificate issued earlier. The opinion of the MA is stated in decision No. 976 K/Pdt/2015 (Liem Teddy vs Kodam III/Siliwangi TNI Angkatan Darat) dated November 27, 2015. In that decision, the Supreme Court opined: ...that in assessing the validity of one of the 2 two authentic proofs of rights, the principle applies that the certificate of rights issued earlier is the valid and legally binding one... This opinion was reaffirmed in decision No. 290 K/Pdt/2016 (Lisnawati vs Ivo La Bara, et al.) dated May 17, 2016, and decision No. 143 PK/Pdt/2016 (Mrs. Rochadini, et al. Vs Pintardjo Soeltan Sepoetro and Mrs. Janda Mumahhaimawati) dated May 19, 2016. In the decision, the Supreme Court stated that: If a duplicate certificate of rights arises, the strongest evidence of rights is the certificate of rights issued earlier. In 2017, the Supreme Court remained consistent with the above opinion. This can be seen in the Supreme Court decision No. 170 K/Pdt/2017 (Hamzah vs Harjanto Jasin, et al.) dated April 10, 2017; Decision No. 734PK/Pdt/2017 (Minister of Finance of the Republic of Indonesia and Kodam III/Siliwangi TNI Angkatan Darat) dated December 19, 2017; and Decision No. 1318 K/Pdt/2017 (Drs Anak Agung Ngurah Jaya vs Anak Agung Putri and A.A. Ngurah Made Narottama) dated September 26, 2017. The legal considerations of the decision No. 734PK/Pdt/2017 state: That if 2 authentic deeds are found, then the principle of the certificate issued first is valid and has legal force Building Use Rights Certificate (SHGB) Number 1458 which was then extended with Building Use Rights Certificate (SHGB) Number 46/Kelurahan Babakan Ciamis in the name of Co-Defendant I (PT Propelat) which was then sold by PT Propelat to the Respondent for Judicial Review on February 11, 1993, first obtaining the Right to Use Certificate Number 18 which was issued on November 11, 1998. In addition, the lawsuit regarding the existence of the duplicate certificate must also make the local Land Office a defendant or co-defendant. The failure to withdraw the Land Office as a party resulted in the lawsuit being declared inadmissible, because if the lawsuit was granted, it could result in the decision not being able to be implemented. This was confirmed in the Supreme Court decision No. 3029 K/Pdt/2016 dated January 26, 2017, which confirmed the decision of the Sekayu District Court No. 14/Pdt.G/2015/PN.Sky dated December 29, 2015. Kepaniteraan Mahkamah Agung Republik Indonesia, 'Yurisprudensi 5/Yur/Pdt/2018: Jika Terdapat Sertifikat Ganda Atas Tanah Yang Sama, Dimana Keduanya Sama-Sama Otentik Maka Bukti Hak Yang Paling Kuat Adalah Sertifikat Hak Yang Terbit Lebih Dahulu.', *Putusan3.Mahkamahagung.Go.Id*, 2018 <[https://putusan3.mahkamahagung.go.id/yurisprudensi/detail/11e93a5e7f0f404eb246313430383334.html?utm\\_source](https://putusan3.mahkamahagung.go.id/yurisprudensi/detail/11e93a5e7f0f404eb246313430383334.html?utm_source)> [accessed 1 May 2025].

the existence of dual certificates can create legal uncertainty and harm parties with good intentions.

This mixed system also contributes to the high number of agrarian disputes in Indonesia. Land certificates that should provide legal certainty can be canceled by third parties who claim to have rights to the land<sup>33</sup>. The cancellation of this certificate can be done through a court decision or an administrative decision if there is a proven legal defect in the issuance process. This shows that land certificates do not always provide strong legal protection for their holders, thus increasing the potential for agrarian disputes<sup>34</sup>. To overcome this problem, reform is needed in the land registration system in Indonesia. One proposal is to switch to a positive publication system, where the state guarantees the accuracy of the data listed in the land certificate. Thus, land certificates will have absolute legal force, and their holders will receive stronger legal protection. However, this change requires adjustments in regulations and increased capacity of related institutions to ensure the accuracy and reliability of land registration data<sup>35</sup>.

## **IV. Max Weber's Rational-Legal Bureaucracy Theory**

---

<sup>33</sup> Annisa Meinara Saraswati and Edith Ratna, 'Pembatalan Sertifikat Hak Milik Atas Tanah Karena Overlapping Di Kantor Pertanahan Kota Semarang', *Notarius*, 15.1 (2022), 403–18.

<sup>34</sup> Abdul Wahid, I Gusti Ayu Ketut Rachmi Handayani, and Lego Karjoko, 'Legal Politics of Changes in Land Ownership Rights Regulations Post Omnibus Law Based on Pancasila Justice', in *International Conference On Law, Economic & Good Governance (IC-LAW 2023)* (Atlantis Press, 2024), pp. 339–45.

<sup>35</sup> Abdul Wahid and others, 'Legalize Custom-Related Landownership Transactions: The Indonesian Experience', *Diponegoro Law Review*, 8.2 (2002), 274–86.

Based Max Weber's Rational-Legal Bureaucracy Theory can be formulated as follows.<sup>36</sup>:

*"Bureaucracy is the most rational form of organization because it is run based on a rational-legal legal system, where authority is obtained legally and formally, functions are carried out impersonally, and employees are selected based on technical qualifications to carry out tasks by established regulations and hierarchies."*

In his full description, Max Weber stated that modern bureaucracy is characterized by<sup>37</sup>:

The principle of legality: authority comes from a rational legal system.

- a) A fixed and detailed division of labor.
- b) A clear hierarchy of authority.
- c) Administration based on written documents.
- d) Impersonality in carrying out tasks.
- e) Recruitment based on technical competence.
- f) Compliance with procedural rules is the main norm.

Weber emphasized that<sup>38</sup>:

*"The purely bureaucratic type of administrative organization... is capable of attaining the highest degree of efficiency... It is superior to any other form in precision, stability, the stringency of its discipline, and reliability."*

## **IV. Compatibility of Positive Publication System With Max Weber's Theory**

---

<sup>36</sup> Max Weber, 'Economy and Society', in *Democracy: A Reader* (Columbia University Press, 2016), pp. 247–51.

<sup>37</sup> Max Weber, *Economy and Society: An Outline of Interpretive Sociology* (University of California press, 1978), I.

<sup>38</sup> Weber, 'Economy and Society'.

In his sociological conception of authority, Max Weber developed the theory of bureaucracy as an ideal form of rational-legal organizational structure. According to Weber, bureaucracy is not merely an administrative apparatus, but a rational system based on law, written regulations, technical competence, and hierarchy of authority. In the context of land registration, this ideal bureaucratic structure requires a land administration system that can work objectively, transparently, and consistently. The positive publication system is more compatible with the rational-legal bureaucracy model because it guarantees the legal validity of information published by land institutions. This reflects the principle of legal-rational authority, which is the essence of Weberian bureaucracy<sup>39</sup>. The negative publication system with positive elements that still apply in Indonesia shows a gap in administrative disorder that is contrary to the principle of bureaucratic rationality. In this system, the state does not guarantee the absolute truth of the data announced, so the legal responsibility for land information becomes uncertain. This is contrary to Weber's bureaucratic principle, which emphasizes predictability and certainty in the implementation of administrative tasks. When land institutions cannot provide guarantees regarding the validity of data, then structurally the bureaucracy becomes weak and loses its rational legal authority. Thus, the negative system creates a space for bureaucratic dysfunction in land management<sup>40</sup>.

The use of a positive publication system has a systemic effect on increasing the effectiveness of the land bureaucracy. By making registration data absolute and binding evidence against anyone, the state, through the land agency, carries out its function as an

---

<sup>39</sup> Weber, I.

<sup>40</sup> Vallensia Mizatul Khair and Wahib Assyahri, 'Optimalisasi Administrasi Pertanahan Di Indonesia: Tantangan Dan Strategi Menuju Kepastian Hukum', *Journal of Public Administration and Management Studies*, 2.2 (2024), 55–62.

authoritative manager of public legal information. This system concretely manifests the clarity of responsibility, strict procedural standards, and written documentation that characterize the Weberian bureaucracy. The positive publication system also reduces the burden of proof in the legal process and accelerates public services because the certainty of information has been guaranteed by formal institutions. This is in line with Weber's vision of efficiency and rationality in modern bureaucracy.<sup>41</sup>

Researchers argue that the positive publication system in land registration in Indonesia is an ideal form of the application of bureaucratic rationality as conceived by Max Weber. Weber's Bureaucracy Theory emphasizes that a rational administrative system must be based on the principles of formal legality, specialization of tasks, hierarchy of authority, and impersonality. In this case, the positive publication system that makes land data official information that is valid, certain, and binding on anyone provides high administrative certainty and minimizes subjective intervention. Thus, this system supports the formation of an efficient, orderly, and legally accountable bureaucracy. On the other hand, a negative publication system with positive elements still opens up room for administrative uncertainty and weakens institutional authority. When land certificates issued by state land institutions can still be canceled due to claims from third parties, the authority of the bureaucracy as the holder of legal authority is questionable. From a Weberian perspective, this condition indicates that the bureaucracy has not worked optimally in ensuring an orderly and objective legal order. Therefore, the transition to a positive publication system is not merely a technical reform but is the realization of a rational-legal bureaucracy that is the foundation of modernizing land administration.

The use of a positive publication system has a systemic effect on increasing the effectiveness of the land bureaucracy. By making

---

<sup>41</sup> Max Weber, *From Max Weber: Essays in Sociology* (Routledge, 2013).

registration data absolute and binding evidence for anyone, the state, through the land agency, carries out its function as an authoritative manager of public legal information. Clarity of responsibility, strict procedural standards, and written documentation that characterize Weberian bureaucracy are concretely manifested in this system. The positive publication system also reduces the burden of proof in the legal process and accelerates public services because the certainty of information is guaranteed by formal institutions. This is in line with Weber's vision of efficiency and rationality in modern bureaucracy.

Researchers argue that the positive publication system in land registration in Indonesia is an ideal form of the application of bureaucratic rationality as conceived by Max Weber. Weber's Bureaucracy Theory emphasizes that a rational administrative system must be based on the principles of formal legality, specialization of tasks, hierarchy of authority, and impersonality. In this case, the positive publication system that makes land data official information that is valid, certain, and binding on anyone provides high administrative certainty and minimizes subjective intervention. Thus, this system supports the formation of an efficient, orderly, and legally accountable bureaucracy. On the other hand, a negative publication system with positive elements still opens up room for administrative uncertainty and weakens institutional authority. When land certificates issued by state land institutions can still be canceled due to claims from third parties, the authority of the bureaucracy as the holder of legal authority is questionable. From a Weberian perspective, this condition indicates that the bureaucracy has not worked optimally in ensuring an orderly and objective legal order. Therefore, the transition to a positive publication system is not merely a technical reform but is the realization of a rational-legal bureaucracy that is the foundation of modernizing land administration.

The rationality of the positive publication system in land registration reflects the main characteristics of a legal-rational

bureaucracy described by Max Weber, namely a system that works based on the principles of legality, hierarchical structure, clear division of tasks, and impersonality in the implementation of authority. In the context of land administration, the positive publication system shows a form of organization that has formal legitimacy for the land information presented. The state, through the land institution, acts as the only entity that has the authority and is fully responsible for the validity of the data, so that the land certificates issued become evidence that cannot be challenged by claims from unregistered third parties.

This rationality is manifested in the form of procedural certainty, uniform service standards, and administrative decisions that can be relied on because they are based on written law. This system avoids subjective and opportunistic administrative practices and encourages every public official to act according to applicable regulations. This is in line with Weber's principle of impersonality, which demands that the bureaucracy act not based on personal interests, but based on objective legal norms. In other words, the positive publication system not only guarantees legal security for landowners but also strengthens the accountability of state institutions in providing credible and rational public services<sup>42</sup>.

In addition, this system allows for predictability in every legal action. Citizens can plan their civil actions with full confidence in the validity of the land information listed in the certificate. This is one of the most obvious forms of Weberian rationality, namely the creation of structured, orderly, and uncertainty-free administrative governance. As a consequence, the positive publication system is not only a form of land law reform but also an embodiment of the modernization of state administration that

---

<sup>42</sup> Tedi Sudrajat, *Hukum Birokrasi Pemerintah: Kewenangan Dan Jabatan* (Sinar Grafika, 2022).

upholds the principles of rational-legal bureaucracy as initiated by Max Weber.<sup>43</sup>

The use of the Positive Publication System in land registration in the context of Max Weber's bureaucratic theory includes aspects of rationality and legality in the public administration system. The positive publication system applied in land registration aims to ensure that information regarding land rights can be openly accessed by the public so that deep legal certainty is created. According to Weber, bureaucracy is a form of organization that operates with the principles of rationality, formality, and legality. In this context, land registration based on a positive publication system can be understood as a step to minimize legal uncertainty regarding land status through clear and systematic administrative procedures. This system is in line with the characteristics of bureaucracy, which emphasizes systematic document recording, rules that do not depend on individuals, and predictable procedures to avoid arbitrary decisions. For Max Weber's bureaucratic theory, rationalization in bureaucracy includes the application of impersonal rules, which are applied by the land registration system in Indonesia. The positive publication system functions to provide clear legality for land rights in a structured and accountable manner. In Weber's theory, bureaucracy is expected to produce efficiency and transparency, which are very relevant in the context of land registration administration. Therefore, the use of a positive publication system in land registration is not only intended to increase legal certainty but also to optimize the efficiency of state administration in managing land rights. Openness of information through positive publication is expected to reduce practices that are detrimental to

---

<sup>43</sup> M Guntur Hamzah and Ria Mardiana Yusuf, *Birokrasi Modern* (PT. RajaGrafindo Persada-Rajawali Pers, 2023).

other parties, such as land disputes or multiple claims for land rights.<sup>44</sup>

The application of Weber's bureaucratic theory in the land registration system also requires an increase in the capacity of human resource management in land registration institutions. Weber emphasized that specialization and professionalism in bureaucracy improve organizational performance. With a positive publication system, the state hopes to reduce the potential for land data manipulation and ensure that every land rights owner can maintain and prove the legal status of their land. In practice, the application of a positive publication system in Indonesia aims to minimize illegitimate claims and create a more structured system for managing land.

According to Weber, one of the characteristics of bureaucracy is a strict supervision system for the implementation of administration. In terms of land registration, this serves to ensure that every step taken by the authorities is by established procedures. The positive publication system in land registration plays a role in clarifying and strengthening the obligations of related parties to follow established administrative procedures, leading to greater transparency and accountability.<sup>45</sup>

The implementation of a positive publication system in land registration from the perspective of Max Weber's bureaucratic theory can be interpreted as an effort to strengthen a rational and controlled administrative system. This is in line with the principles of bureaucracy that emphasize predictability, efficiency, and objective standards in public services. The improvement of the land registration administration system using positive publications is expected to have a significant impact on improving the quality of

---

<sup>44</sup> Klaus H Goetz, '11 Administrative Reform: Is Public Bureaucracy Still an Obstacle?', *Governance in Contemporary Germany: The Semisovereign State Revisited*, 2005, 239.

<sup>45</sup> Frank Fischer and Carmen Sirianni, *Critical Studies in Organization and Bureaucracy* (Temple University Press, 1994).

land management in Indonesia, as well as creating justice and legal certainty for all land rights owners.

a) Predictability and Efficiency in Land Registration

Predictability and efficiency in land registration are crucial aspects of an effective land administration system. A structured and transparent land registration ensures legal certainty for landowners and minimizes ownership disputes. The implementation of modern technology, such as the digitalization of the registration process, has been shown to improve the efficiency and accuracy of land data management. A study by Deininger and Feder emphasized that land administration reforms that adopt information technology can speed up the registration process and increase public trust in the system<sup>46</sup>. In addition, the application of good governance principles in land administration contributes significantly to predictability and efficiency. Transparency, accountability, and public participation in the land registration process ensure that ownership information is accurately available and accessible to all stakeholders. A document from the Food and Agriculture Organization (FAO) emphasized that well-managed land administration can reduce corruption and improve the efficiency of public services<sup>47</sup>.

However, challenges in implementing an efficient land registration system still exist, especially in developing countries. Limited resources, inadequate infrastructure, and resistance to change are major obstacles. Research by David Asante Edwin shows that a pro-poor approach to land administration, which

---

<sup>46</sup> Klaus Deininger and Gershon Feder, 'Land Registration, Governance, and Development: Evidence and Implications for Policy', *The World Bank Research Observer*, 24.2 (2009), 233–66.

<sup>47</sup> Wael Zakout, Babette Wehrmann, and Mika-Petteri Torhonen, 'Good Governance in Land Administration', *World Bank: Washington, DC, USA*, 2006.

takes into account the needs and limitations of the poor, can be an effective solution to overcoming these obstacles.<sup>48</sup>

Integration of land registration systems with blockchain technology is also beginning to be explored as an effort to improve efficiency and data security. Blockchain offers an immutable and transparent recording system, thereby minimizing the risk of fraud and data manipulation. A study by Ammar Ahmad discusses the potential use of blockchain in land registration, which can improve efficiency and trust in land transactions.<sup>49</sup>

In addition, policy reform and strengthening institutional capacity are steps in increasing the predictability and efficiency of land registration. Bureaucratic restructuring, as mandated by Presidential Regulation Number 177 of 2024, aims to improve land governance through the digitization of services and increasing human resource competency. These steps are expected to simplify land registration procedures, reduce convoluted bureaucracy, and increase the accessibility of services to the wider community. However, the implementation of this reform faces various challenges, including resistance to change and limited resources.<sup>50</sup> Therefore, a strong commitment from the government and active participation from the community are required to ensure the success of the reform. In addition, increasing institutional capacity through training and employee competency development is key to

---

<sup>48</sup> David Asante Edwin, Evam Kofi Glover, and Edinam K Glover, 'When Tradition Meets Modernity in Land Registration: Evidence from Dagbon, Ghana', *Land*, 9.11 (2020), 416.

<sup>49</sup> Ammar Ahmad and Sunil Kumar, 'Land Registration Using Blockchain With Khasra Number As Land Identification', *Journal of Pharmaceutical Negative Results*, 2022, 6037–48.

<sup>50</sup> Duma Indah Sari Lubis, Andi Hakim Lubis, and Rodiatun Adawiyah, 'Reformasi Birokrasi Dalam Pengelolaan Pertanahan Nasional (Analisis Terhadap Implementasi Peraturan Presiden No. 177 Tahun 2024 Dalam Meningkatkan Efektivitas Dan Keadilan Sosial Di Indonesia)', *Law Jurnal*, 5.1 (2024), 45–57.

supporting the transformation of a more efficient and predictable land registration system.<sup>51</sup>

b) Administrative Authority as a Pillar of Legal Certainty

Weber explains that bureaucracy is an organizational system that has formal, hierarchical, and rule-based characteristics. Within this framework, administrative authority acts as an institution that carries out government functions based on established legal principles. Through a clear bureaucratic structure, administrative decisions can be taken consistently, which in turn supports legal certainty in society. In Weber's bureaucratic theory, administrative authority is characterized by the separation between administrative tasks and the personal lives of its officials. This ensures that the decisions taken are objective and not influenced by personal bias. Thus, bureaucracy can function as a guarantor of legal certainty, where every action taken by the administrative authority will be by applicable norms and regulations. Legal uncertainty can be minimized when decisions are made based on clear procedures and rules, which are characteristic of bureaucracy.<sup>52</sup>

Administrative authority is also expected to implement transparency and accountability in every decision and action taken. In the context of Max Weber's bureaucratic theory, accountability is one of the principles that must be applied to maintain the integrity and public trust in administrative authority. When the public can see and understand the decision-making process, it will be more confident that the action is carried out based on law and is not influenced by personal interests.<sup>53</sup> This will contribute to strengthening legal certainty and social justice. Furthermore, in

---

<sup>51</sup> Herny Christine and others, 'A Study of Permissioned Blockchain-Based Framework for Land Ownership Tracking in Indonesia', *Jurnal Interkom: Jurnal Publikasi Ilmiah Bidang Teknologi Informasi Dan Komunikasi*, 17.3 (2022), 119–26.

<sup>52</sup> Paul du Gay, *In Praise of Bureaucracy: Weber-Organization-Ethics* (SAGE, 2000).

<sup>53</sup> Archon Fung, 'Empowered Participation: Reinventing Urban Democracy.', *Princeton University Press*, 2006.

implementing Weber's bureaucratic principles, administrative authorities must also pay attention to social dynamics and the evolving needs of society. Rigid bureaucracy can cause a gap between the policies produced and the real needs of the community. Therefore, community involvement in the policy-making process ensures that the policies taken are relevant and meet public expectations. Through community participation, administrative authorities can be more responsive to changes that occur, so that legal certainty is maintained. The connection between administrative authorities and the community also includes the use of information technology in public administration. With the adoption of technology, the administrative process can be carried out more efficiently and transparently. This allows the public to access information related to policies and administrative decisions more easily. In the digital era, administrative authorities must be able to utilize technology to increase transparency, accountability, and public service. This also contributes to legal certainty, because the public can know directly how the law is applied in everyday life.<sup>54</sup>

**Table. 3**  
**Conceptual Framework (Weberian Theory)**  
**and Its Application in Land Registration**  
**(Positive Publication System)**

<b>Framework</b>	<b>Conceptual Aspect (Weber's Theory)</b>	<b>Application in Land Registration (Positive Publication System)</b>
<b>Legal-Formal Rationality</b>	Bureaucratic authority derives from the	Land certificates issued by the state have legal

<sup>54</sup> John Carlo Bertot, Paul T Jaeger, and Justin M Grimes, 'Promoting Transparency and Accountability through ICTs, Social Media, and Collaborative E-government', *Transforming Government: People, Process and Policy*, 6.1 (2012), 78-91.

	legitimacy of written law	force and are binding on third parties
<b>Organizational Hierarchy</b>	Bureaucracy is structured vertically with a clear chain of authority	BPN (National Land Agency) and Land Offices operate based on structural authority and formal legal procedures
<b>Division of Labor &amp; Specialization</b>	Bureaucratic functions are divided functionally and professionally	Land officers possess technical expertise in land measurement, verification, and data validation
<b>Impersonality</b>	Bureaucratic actions are objective and not influenced by personal or emotional relationships.	All land registration applications are processed according to legal rules without discrimination or special treatment.
<b>Rules as Primary Guidance</b>	All bureaucratic actions follow legally established rules and procedures	Land registration follows Government Regulation No. 24 of 1997 on Land Registration in an orderly and standardized manner
<b>Efficiency &amp; Predictability</b>	Bureaucracy is designed to deliver efficient and predictable services	Valid and indisputable land data facilitates transactions, investments, and prevents disputes
<b>Legitimacy &amp; Accountability</b>	Bureaucracy gains public trust through compliance with	As bureaucratic products, land certificates receive full recognition from society

	legitimate norms and laws.	and courts as valid proof of ownership rights.
<b>Ultimate Goal: Administrative Order</b>	Bureaucratic rationalization aims to create stable and modern state governance.	The positive publication system strengthens administrative land order and supports a modern and efficient national legal framework.

### Theoretical Arguments on Transition to a Positive Publication System

The transition from a negative publication system to a positive publication system in land registration is a strategic step to improve the legal certainty and efficiency of land administration. The positive publication system ensures that data recorded in the land register is considered correct and cannot be challenged unless proven fraudulent. This is different from the negative publication system, where the state does not guarantee the accuracy of the recorded data, thus creating legal uncertainty for land rights holders<sup>55</sup>. In the Indonesian context, the negative publication system with a positive tendency has caused various problems, such as land disputes and double certificates, which indicate the need for reform towards a positive publication system<sup>56</sup>.

The implementation of a positive publication system requires certain prerequisites, such as the availability of adequate land base maps, extensive coverage of certified land areas, and clear mapping of forest and customary land boundaries. In addition, competent human resources and a supportive legal system are needed to ensure the success of this transition. By meeting these prerequisites, the risk of data errors in the register

---

<sup>55</sup> Apriani and Bur.

<sup>56</sup> Herdarezki.

can be minimized, so that the state's financial burden due to compensation for these errors can be controlled.<sup>57</sup>

From the perspective of Max Weber's rational-legal bureaucracy theory, the positive publication system is in line with the principles of bureaucracy that emphasize legality, professionalism, and impersonality in administration. In this system, land administration employees act based on clear legal rules and carry out their duties professionally without personal influence, thereby increasing efficiency and public trust in the land registration system. Thus, the transition to a positive publication system not only increases legal certainty but also strengthens the legitimacy of the land bureaucracy. Philosophically, the positive publication system reflects the values of justice and legal certainty that are the basis of the modern legal system. By ensuring the accuracy of the recorded data, this system provides stronger legal protection for land rights holders and prevents prolonged disputes. In addition, this system encourages transparency and accountability in land administration, which are important aspects of realizing good governance.

In the global context, many developed countries have adopted a positive publication system in land registration, such as Australia and Germany, which demonstrates the effectiveness of this system in ensuring legal certainty and administrative efficiency. The experiences of these countries can be a reference for Indonesia in designing and implementing a positive publication system that is by national conditions and needs. Thus, the transition to a positive publication system is an important step in sustainable land reform that is oriented toward legal certainty and justice for the entire community.

#### a) Philosophical Perspective

---

<sup>57</sup> Nur Susilowati, Mulyani Djakaria, and Ida Nurlinda, 'Analisis Prospek Pemberlakuan Sistem Pendaftaran Tanah Publikasi Positif Dan Aspek Kepastian Hukum Pemegang Hak Atas Tanah', *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan*, 4.1 (2020), 52–67.

From the perspective of legal philosophy, the transition to a positive publication system must be rooted in the fundamental values that underpin the Indonesian legal order, namely the values of legal certainty, justice, and utility. The philosophy of Pancasila, especially the 5th principle "*Social Justice for All Indonesian People*", demands that the state provide a legal system that can guarantee the protection of land rights fairly and equally.<sup>58</sup> Steps from the philosophical side include<sup>59</sup>:

- Internalization of basic legal values in the land system through a moral and administrative ethics approach.
- Evaluation of the legal paradigm in land registration, by placing humans as the main subject, not merely the object of the legal-formal system.
- Application of the principle of state responsibility for information in the register, as a manifestation of the principle of "rechtsstaat" (rule of law).

#### b) Legal Perspective

From a legal aspect, reform towards a positive publication system requires revision and harmonization of legal norms governing land registration, both at the level of laws, government regulations, and technical regulations at the Ministry of ATR/BPN.<sup>60</sup> The legal steps required include:

- Reformulation of norms in Law No. 5 of 1960 and PP No. 24 of 1997, and PP No. 18 of 2021 by explicitly including the principle of positive publication in land registration.
- Development of a state responsibility system for the validity of data in title certificates, including an indemnity scheme if the state is negligent.

<sup>58</sup> Sukamto Notonagoro, *Pancasila Secara Ilmiah Populer* (Pantjuran Tudjuh, 1975).

<sup>59</sup> Yusdiyanto Yusdiyanto, 'Makna Filosofis Nilai-Nilai Sila Ke-Empat Pancasila Dalam Sistem Demokrasi Di Indonesia', *FIAT JUSTISIA: Jurnal Ilmu Hukum*, 10.2 (2016).

<sup>60</sup> Harsono Boedi, 'Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi Dan Pelaksanaannya', *Jakarta: Jambatan*, 2003.

- Preparation of technical norms for land digitization, to ensure the integrity of register data.
- Restructuring the authority and accountability of land officials, so that the administrative process can be carried out objectively and transparently.

#### c) Sociological Perspective

Sociologically, the transition to a positive publication system must consider the social structure, customs of indigenous communities, and the legal literacy of the community in understanding land rights. Active community involvement in the registration process and legal socialization is essential for the legitimacy of the new system. Crucial sociological steps include<sup>61</sup>:

- Socialization and education of land law to the community, especially in rural areas and indigenous communities.
- Social mapping of customary rights and tenurial conflicts ensures no community rights are eliminated.
- Participatory involvement of civil society, NGOs, and universities in the transition process, both at the policy formulation stage and implementation in the field.
- Building trust in the land bureaucracy through transparency and public complaint mechanisms.

## V. Conclusion

Based on the results of a normative analysis of the publication system in land registration in Indonesia, it is concluded that implementing the negative publication system with positive elements, as currently in force, still leaves fundamental weaknesses in guaranteeing legal certainty for land rights holders. Certificates as legal products of land registration do not provide full protection, because they can still be canceled even though they are obtained in

---

<sup>61</sup> Ifdhal Kasim and Ifdhal Kasim, *Hukum: Paradigma, Metode Dan Dinamika Masalahnya* (Lembaga Studi dan Advokasi Masyarakat (ELSAM), Perkumpulan untuk Pembaruan ..., 2002).

good faith. This shows that the state has not fully assumed legal responsibility for the data that has been registered, thus creating a space of uncertainty and increasing the potential for agrarian conflict.

From the perspective of Max Weber's rational-legal bureaucracy theory, the modern legal system must operate based on orderly procedures, legal predictability, and administrative accountability. These characteristics have not been fully realized in the negative publication system implemented in Indonesia. In contrast, the positive publication system, which requires the state to guarantee the accuracy of registration data and protect parties who obtain rights legally and in good faith, better reflects the principles of rational-legal bureaucracy outlined by Weber. In this framework, legal legitimacy lies not only in the formalism of regulations but also in objective, consistent, and trustworthy administrative behavior.

Therefore, reform towards a pure positive publication system is a necessity that not only aims to improve the technical aspects of land administration but also to build a bureaucratic structure that can guarantee procedural justice and increase state legitimacy in managing land rights. This change is also a manifestation of institutional rationalization as recommended by Weber, where law becomes an instrument of certainty, not just an administrative formality. Reform of the land registration publication system is a strategic step in realizing fair, accountable, and public interest-oriented land governance within the framework of a modern state of law.

## References

- Abdulai, Raymond Talinbe, and Edward Ochieng, 'Land Registration and Landownership Security: An Examination of the Underpinning Principles of Registration', *Property Management*, 35.1 (2017), 24–47
- Ahmad, Ammar, and Sunil Kumar, 'Land Registration Using Blockchain With Khasra Number As Land Identification', *Journal of Pharmaceutical Negative Results*, 2022, 6037–48
- Anindhita, Andi Batari, Farida Patittingi, and Chalis Al Rossi, 'Perbandingan Sistem Publikasi Positif Dan Negatif Pendaftaran Tanah: Perspektif Kepastian Hukum', *Amanna Gappa*, 2021, 106–13
- Apriani, Desi, and Arifin Bur, 'Kepastian Hukum Dan Perlindungan Hukum Dalam Sistem Publikasi Pendaftaran Tanah Di Indonesia', *Jurnal Bina Mulia Hukum*, 5.2 (2021), 220–39
- Arruñada, Benito, and Nuno Garoupa, 'The Choice of Titling System in Land', *The Journal of Law and Economics*, 48.2 (2005), 709–27
- Asshiddiqie, Jimly, 'Pengantar Ilmu Hukum Tata Negara', 2011
- Azisah, Nurul, 'Sistem Pendaftaran Tanah Di Indonesia Dalam Perspektif Hukum Administrasi Negara', *Jurnal Ilmu Hukum Aktualita*, 1.2 (2024), 71–85
- Boedi, Harsono, 'Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi Dan Pelaksanaannya', *Jakarta: Jambatan*, 2003
- Bur, Arifin, and Desi Apriani, 'Sertifikat Sebagai Alat Pembuktian Yang Kuat Dalam Hubungannya Dengan Sistem Publikasi Pendaftaran Tanah, UIR Law Review' (UIR Press, Pekanbaru.(sdh dibaiki), 2017)
- Carlo Bertot, John, Paul T Jaeger, and Justin M Grimes, 'Promoting Transparency and Accountability through ICTs, Social Media, and Collaborative E-government', *Transforming Government: People, Process and Policy*, 6.1 (2012), 78–91
- Christine, Herny, Koo Tito Novelianto, Meta Restiawati, Happrila Yuliana Jayanti, and Afriyadi Afriyadi, 'A Study of Permissioned Blockchain-Based Framework for Land Ownership Tracking in Indonesia', *Jurnal Interkom: Jurnal*

- Publikasi Ilmiah Bidang Teknologi Informasi Dan Komunikasi*, 17.3 (2022), 119–26
- Deininger, Klaus, and Gershon Feder, 'Land Registration, Governance, and Development: Evidence and Implications for Policy', *The World Bank Research Observer*, 24.2 (2009), 233–66
- Edwin, David Asante, Evam Kofi Glover, and Edinam K Glover, 'When Tradition Meets Modernity in Land Registration: Evidence from Dagbon, Ghana', *Land*, 9.11 (2020), 416
- Fischer, Frank, and Carmen Sirianni, *Critical Studies in Organization and Bureaucracy* (Temple University Press, 1994)
- Fung, Archon, 'Empowered Participation: Reinventing Urban Democracy.', *Princeton University Press*, 2006
- du Gay, Paul, *In Praise of Bureaucracy: Weber-Organization-Ethics* (SAGE, 2000)
- Goetz, Klaus H, '11 Administrative Reform: Is Public Bureaucracy Still an Obstacle?', *Governance in Contemporary Germany: The Semisovereign State Revisited*, 2005, 239
- Hamzah, M Guntur, and Ria Mardiana Yusuf, *Birokrasi Modern* (PT. RajaGrafindo Persada-Rajawali Pers, 2023)
- Herdarezki, Nadila Maysila, 'Sistem Publikasi Tanah Positif (Terobosan Mewujudkan Kepastian Hukum Dalam Pendaftaran Tanah)', *Jurnal Pertanahan*, 11.2 (2021)
- Hutchinson, Terry, and Nigel Duncan, 'Defining and Describing What We Do: Doctrinal Legal Research.', *Deakin Law Review*, 17.1 (2012), 83–119
- Ibrahim, Johnny, 'Teori Dan Metodologi Penelitian Hukum Normatif', *Malang: Bayumedia Publishing*, 57 (2006), 295
- Kasim, Ifdhal, and Ifdhal Kasim, *Hukum: Paradigma, Metode Dan Dinamika Masalahnya* (Lembaga Studi dan Advokasi Masyarakat (ELSAM), Perkumpulan untuk Pembaruan ..., 2002)
- Kepaniteraan Mahkamah Agung Republik Indonesia, 'Yurisprudensi 5/Yur/Pdt/2018: Jika Terdapat Sertifikat Ganda Atas Tanah Yang Sama, Dimana Keduanya Sama-Sama Otentik Maka Bukti Hak Yang Paling Kuat Adalah Sertifikat Hak Yang Terbit Lebih Dahulu.', *Putusan3.Mahkamahagung.Go.Id*, 2018  
<<https://putusan3.mahkamahagung.go.id/yurisprudensi/det>

- ail/11e93a5e7f0f404eb246313430383334.html?utm\_source  
> [accessed 1 May 2025]
- Khair, Vallensia Mizatul, and Wahib Assyahri, 'Optimalisasi Administrasi Pertanahan Di Indonesia: Tantangan Dan Strategi Menuju Kepastian Hukum', *Journal of Public Administration and Management Studies*, 2.2 (2024), 55–62
- Knight, Andrew, and Les Ruddock, *Advanced Research Methods in the Built Environment* (John Wiley & Sons, 2009)
- Lubis, Duma Indah Sari, Andi Hakim Lubis, and Rodiatun Adawiyah, 'Reformasi Birokrasi Dalam Pengelolaan Pertanahan Nasional (Analisis Terhadap Implementasi Peraturan Presiden No. 177 Tahun 2024 Dalam Meningkatkan Efektivitas Dan Keadilan Sosial Di Indonesia)', *Law Jurnal*, 5.1 (2024), 45–57
- Mandala, Opan Satria, Ana Rahmatyar, and Muhammad Saparudin Efendi, 'Konstruksi Perlindungan Hukum Untuk Pembeli Tanah Beritikad Baik: Analisis Dan Solusi Praktis Construction Of Legal Protection For Good Faith Land Buyers: Analysis And Practical Solutions'
- Marzuki, Peter Mahmud, 'Penelitian Hukum Edisi Pertama', *Jakarta: Kencana Pernada Media Group*, 2005
- Mikusiński, Grzegorz, and Krzysztof Niedziałkowski, 'Perceived Importance of Ecosystem Services in the Białowieża Forest for Local Communities–Does Proximity Matter?', *Land Use Policy*, 97 (2020), 104667
- Mujiburrohman, D A, 'Menyoal Penafsiran Tanah Telantar', *Jurnal Yudisial*, 11.1 (2018), 1–22
- Nitiyudo, Sari, 'Regulasi Ideal Pendaftaran Tanah Terhadap Bukti Sertipikat Yang Berbasis Kepastian Hukum' (UNIVERSITAS ISLAM SULTAN AGUNG, 2023)
- Nneoma, Iroaganachi, Joseph Ufere Kalu, and Jatau Abigail Francis, 'Effect of Land Title Registration on Land Sales and Professionals' Satisfaction', *African Scholar Journal of Environmental Design & Construction Mgt. (JECM-4)*, 22.4 (2021), 33–46
- Notonagoro, Sukamto, *Pancasila Secara Ilmiah Populer* (Pantjuran Tudjuh, 1975)
- Patittingi, Farida, Syahrul Yasin Limpo, Kahar Lahae, Andi Batari Anindhita, Chalis Al Rossi, and Marwati Riza, 'The Comparison of Positive and Negative Publication System on Land

- Registration in Indonesia', *Pt. 2 J. Legal Ethical & Regul. Issues*, 24 (2021), 1
- Saraswati, Annisa Meinar, and Edith Ratna, 'Pembatalan Sertifikat Hak Milik Atas Tanah Karena Overlapping Di Kantor Pertanahan Kota Semarang', *Notarius*, 15.1 (2022), 403–18
- Sessa, Maria Rosaria, Alessio Russo, and Francesco Sica, 'Opinion Paper on Green Deal for the Urban Regeneration of Industrial Brownfield Land in Europe', *Land Use Policy*, 119 (2022), 106198
- Sitompul, Helena Albright, 'Permasalahan Sengketa Kepemilikan Dengan Alas Hak Surat Keterangan Riwayat Tanah (SKT) Serta Akibat Bagi Pemegangnya', *UNES Law Review*, 6.2 (2023), 5956–65
- Soekanto, Soerjono, and Sri Mamudji, 'Penelitian Hukum Normatif Suatu Tinjauan Singkat, Cet. 16', *Rajawali Pers, Jakarta*, 2014
- Sudrajat, Tedi, *Hukum Birokrasi Pemerintah: Kewenangan Dan Jabatan* (Sinar Grafika, 2022)
- Suhariono, Agus, Mochamad Kevin Romadhona, Muhammad Indra Yanuardi, and Muammar Zaid Nampira, 'Sistem Publikasi Pendaftaran Tanah (Kajian Sistem Publikasi Negatif Bertendensi Positif)', *Notaire*, 5.1 (2022)
- Suharno, Suharno, Haryo Budhiawan, and Muh Arif Suhattanto, 'Identifikasi Permasalahan Proses Pendaftaran Tanah Dan Upaya Perbaikannya Dalam Rangka Percepatan Proses Pendaftaran Tanah Di Indonesia (Studi Khusus Kantor Pertanahan Di Lingkungan Kanwil Kementrian Agraria Dan Tata Ruang/BPN Provinsi Jawa Timur)', 2016
- Surawirawan, Irsyad, and Martin Roestamy, 'Pengaruh Penerapan Stelsel Negatif Terhadap Duplikasi Kepemilikan Tanah Dikaitkan Dengan Pengembangan Perumahan Bagi Masyarakat', *Jurnal Living Law*, 8.1 (2016), 73–81
- Susilowati, Nur, Mulyani Djakaria, and Ida Nurlinda, 'Analisis Prospek Pemberlakuan Sistem Pendaftaran Tanah Publikasi Positif Dan Aspek Kepastian Hukum Pemegang Hak Atas Tanah', *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan*, 4.1 (2020), 52–67
- Tamanaha, Brian Z, *Law as a Means to an End: Threat to the Rule of Law* (Cambridge University Press, 2006), iii

- Wahid, Abdul, Siti Malikhatun Badriyah, Ahmad Muhamad Mustain Nasoha, and Zamzami Zamzami, 'Legalize Custom-Related Landownership Transactions: The Indonesian Experience', *Diponegoro Law Review*, 8.2 (2002), 274–86
- Wahid, Abdul, I Gusti Ayu Ketut Rachmi Handayani, and Lego Karjoko, 'Legal Politics of Changes in Land Ownership Rights Regulations Post Omnibus Law Based on Pancasila Justice', in *International Conference On Law, Economic & Good Governance (IC-LAW 2023)* (Atlantis Press, 2024), pp. 339–45
- Weber, Max, *Economy and Society: A New Translation* (Harvard University Press, 2019)
- , *Economy and Society: An Outline of Interpretive Sociology* (University of California Press, 1978), i
- , 'Economy and Society', in *Democracy: A Reader* (Columbia University Press, 2016), pp. 247–51
- , *From Max Weber: Essays in Sociology* (Routledge, 2013)
- Wibowo, Agung, and Lukas Giessen, 'Absolute and Relative Power Gains among State Agencies in Forest-Related Land Use Politics: The Ministry of Forestry and Its Competitors in the REDD+ Programme and the One Map Policy in Indonesia', *Land Use Policy*, 49 (2015), 131–41
- Wójcik-Leń, Justyna, Przemysław Leń, Monika Mika, Hubert Kryszk, and Paweł Kotlarz, 'Studies Regarding Correct Selection of Statistical Methods for the Needs of Increasing the Efficiency of Identification of Land for Consolidation—A Case Study in Poland', *Land Use Policy*, 87 (2019), 104064
- Yasa, Putu Astika, and I Nyoman Bagiastra, 'Kedudukan Sertipikat Hak Atas Tanah Terkait Berlakunya Sistem Publikasi Negatif Di Indonesia', *Udayana Master Law Journal*, 10.4 (2021), 827–40
- Yusdiyanto, Yusdiyanto, 'Makna Filosofis Nilai-Nilai Sila Ke-Empat Pancasila Dalam Sistem Demokrasi Di Indonesia', *FIAT JUSTISIA: Jurnal Ilmu Hukum*, 10.2 (2016)
- Zakout, Wael, Babette Wehrmann, and Mika-Petteri Torhonen, 'Good Governance in Land Administration', *World Bank: Washington, DC, USA*, 2006

\*\*\*

### **DECLARATION OF CONFLICTING INTERESTS**

The authors state that there is no conflict of interest in the publication of this article.

### **FUNDING INFORMATION**

None

### **ACKNOWLEDGMENT**

None

### **HISTORY OF ARTICLE**

Submitted : September 12, 2024

Revised : July 17, 2025

Accepted : February 12, 2025

Published : December 25, 2025

\*\*\*