

Challenges Arising from Article 22(2) of Ministerial Regulation ATR/BPN No. 6/2018 on Complete Systematic Land Registration (PTSL) Pertaining to Insufficient or Missing Evidence of Community Land Ownership

Fida Nabilah Taufiq, Mohammad Hamidi Masykur, Supriyadi Supriyadi

Cite this article as

Taufiq, Fida Nabilah, Mohammad Hamidi Masykur, and Supriyadi Supriyadi. "Challenges Arising from Article 22(2) of Ministerial Regulation ATR/BPN No. 6/2018 on Complete Systematic Land Registration (PTSL) Pertaining to Insufficient or Missing Evidence of Community Land Ownership". *Unnes Law Journal* 9, no. 2 (2023): 419-440. <https://doi.org/10.15294/ulj.v9i2.75274>

AIMS AND SCOPE

The *Unnes Law Journal* has taken a broad and visionary approach to legal scholarship in Indonesia since its beginnings in 2012. The *Unnes Law Journal* has committed to become a law journal that foster a knowledge of law in empowering justice in Indonesia and global context. The *Unnes Law Journal* has since established itself as a leading journal for theoretical, interdisciplinary, comparative, and other conceptually oriented inquiries into law and law reform in Indonesia and global context, as well as comparative legal issues in Southeast Asia. The *Journal* **regularly published articles related to Indonesian legal studies in various perspectives of legal philosophy, law and economics, legal history, criminology, justice and crime, gender and feminist analysis of law, law and literature, political aspects in law, and law and culture in contemporary global context.** The *Unnes Law Journal* is currently one of the leading law journals in Indonesia. The *Journal* also received the reputable ranking for journal quality from the Ministry of Education, Research and Technology of Republic of Indonesia.

EDITORIAL TEAM

Editor in Chief: Rahayu Fery Anitasari (Universitas Negeri Semarang, Indonesia). **Managing Editor:** Ridwan Arifin (Universitas Negeri Semarang, Indonesia). **Editorial Board:** Yoshiki Kurumisawa (Waseda University, Japan), Henk Addink (Utrecht Universiteit, the Netherlands), Sumanto Al Qurtuby (King Fahd University, EAU), Reid Mortensen (University of Southern Queensland, Australia), Dian Latifiani (Universitas Negeri Semarang, Indonesia), Muhammad Bahrul Ulum (Queensland University of Technology, Australia), Sholahuddin Al-Fatih (Universitas Muhammadiyah Malang, Indonesia), Dewa Gede Sudika Mangku (Universitas Pendidikan Ganesha, Indonesia), Amarru Muftie Holish (Onati Socio Legal Institute, Spain), Haykal Azhari (University of Debrecen, Hungary). **Student Editors:** Nadiyah Meyliana Putri (Universitas Negeri Semarang, Indonesia), Muhammad Iqbal Baiquni (Universitas Negeri Semarang, Indonesia), Septhian Eka Adiyatma (Universitas Negeri Semarang, Indonesia). **Online Editors:** Yoris Adi Mareta (Universitas Negeri Semarang, Indonesia), Wahyudin (Universitas Negeri Semarang, Indonesia).

Challenges Arising from Article 22(2) of Ministerial Regulation ATR/BPN No. 6/2018 on Complete Systematic Land Registration (PTSL) Pertaining to Insufficient or Missing Evidence of Community Land Ownership

Fida Nabilah Taufiq, Mohammad Hamidi Masykur, Supriyadi

ABSTRACT. The Complete Systematic Land Registration (PTSL) program's successful implementation hinges on satisfying the physical and juridical data requirements for individual land plots owned by a single person. However, our research highlights disparities between juridical and physical data for specific land plots. Moreover, a lack of community awareness regarding the crucial role of land data collection presents significant challenges in the field. A notable obstacle, as outlined in Article 22(2) of the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No. 6 of 2018, pertains to individuals applying for land registration through the PTSL Program without fulfilling complete requirements or providing proof of land ownership. This non-compliance poses a potential catalyst for disputes during the PTSL land registration process. As of early 2017, Indonesia harbored 126,000,000 land parcels, with only 51,000,000 certified and 79,000,000 awaiting official registration, earmarked for acceleration through PTSL. Our focus on Malang Regency in East Java, spanning an expansive 3,534.86 km² or 353,486 ha, reveals its active participation in the PTSL program. Notably, the region faces a substantial PTSL quota of 55,000 land parcels in 2023, distributed across 19 villages in 5 sub-districts, marking the highest quota in East Java Province. The research also underscores the pressing need for enhanced community awareness and compliance with PTSL requirements, particularly focusing on the potential disputes arising from inadequate documentation during the land registration process.

KEYWORDS. PTSL, Incomplete Proof of Community Land Ownership, None at All.

Challenges Arising from Article 22(2) of Ministerial Regulation ATR/BPN No. 6/2018 on Complete Systematic Land Registration (PTSL) Pertaining to Insufficient or Missing Evidence of Community Land Ownership

Fida Nabilah Taufiq, Mohammad Hamidi Masykur, Supriyadi*

Introduction

Indonesia is an agrarian country where the majority of the population earns a living in the agricultural sector. The relationship between humans and land is inseparable, because land rights always follow the certainty of the landowner. The relationship between humans and land is inseparable from the function of land ownership. All daily activities of humans in general and the largest part are carried out on land, including after humans die, they still need land as a final resting place or cremated on the ground and become soil.² Land has a social function which means that land ownership is not individually but in groups in the form of land, springs around the land, or plantation areas controlled by both individuals and groups, another function of land is an economic function where land can be transferred such as buying and selling land, grants and inheritance.

* Fida Nabilah Taufiq (Faculty of Law, Universitas Brawijaya, Malang, Indonesia), Mohammad Hamidi Masykur (Faculty of Law, Universitas Brawijaya, Malang, Indonesia), Supriyadi (Faculty of Law, Universitas Brawijaya, Malang, Indonesia)
Corresponding email: fidanabilat@gmail.com

² Soetiknjo Imam, *Politik Agraria Nasional, Gadjah Mada University Press, Yogyakarta* (Yogyakarta: Gajah Mada University Press, 1994).

Judging from the function and role of land in human life, Land has a dual function, namely as a *social asset* and *capital asset*. As a *social asset*, land is a means of binding unity among the Indonesian people in living in society, nation and state, so that, for the Indonesian people, land also has cosmic magical-religious value, while the *capital asset of* land is a capital factor in development and land must be used and utilised to the greatest extent for the welfare of the people fairly and equitably, and must also be preserved.³

In addition, Indonesia is also a state of law where every activity in the country must be based on legal provisions. As the constitutional mandate stipulated in Article 28 D paragraph (1) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution), which reads: "every person shall be entitled to recognition, guarantees, protection, and certainty of a just law and equal treatment before the law." The provision of fair legal certainty also includes legal certainty regarding land rights for all people.

The 1945 Constitution also stipulates that the earth, water, and natural resources contained therein shall be controlled by the state and utilised for the greatest prosperity of the people (Article 33 paragraph (3) of the 1945 Constitution). To implement the constitutional mandate, Law No. 5/1960 on the Basic Regulation of Agrarian Principles (hereinafter referred to as UUPA) was born. UUPA is a major breakthrough and a fundamental change for land law in Indonesia. This is related to the existence of UUPA which replaces and/or abolishes the agrarian law of colonial products that are dualistic in nature as part of the effort to perpetuate colonialism by dividing the Indonesian nation. In its implementation, the UUPA is the basis or reference for regulating land law in Indonesia. With the issuance of the UUPA, it is expected that there will be legal uniformity in the land sector nationally throughout Indonesia.⁴

Land also needs to be demarcated where in law the word "land" is used in a juridical sense, as an understanding that has been given an official limitation by the UUPA. UUPA explains that the definition of agrarian includes the earth, water and natural resources contained therein. In its limitations, as explained in Article 48 of the UUPA, it even includes space,

³ Urip Santoso, *Perolehan Hak Atas Tanah* (Jakarta: Kencana, 2012).

⁴ Boedi Harsono, *Hukum Agraria Indonesia : Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi Dan Pelaksanaanya* (Jakarta: Djambatan, 2005).

MISSING EVIDENCE OF COMMUNITY LAND OWNERSHIP

namely the space above the earth and water that contains energy and elements that can be used for efforts to maintain and develop the fertility of the earth, water and natural resources contained therein and other matters concerned. In this case, the earth in question is the land in the entire territory of the Republic of Indonesia which is a natural resource as a gift of God Almighty which is intended for the welfare of the community. For this reason, humans and land are two things that cannot be separated, because human life cannot be separated from the land.⁵

Article 2 Paragraph (3) of the UUPA explains the allocation of land for the prosperity of the people as the interests of nationality, welfare and independence in society and the Indonesian legal state to achieve a sovereign, just and prosperous state. UUPA is a set of implementing regulations aimed at realising legal certainty guarantees for land rights in the territory of the Republic of Indonesia. In the context of structuring land related to use, control and ownership, registration of land rights is held to create legal certainty, the explanation of Article 19 Paragraph (1) of the UUPA states that: *"In order to ensure legal certainty, the Government shall conduct land registration throughout the territory of the Republic of Indonesia in accordance with the provisions regulated by government regulation."*

The explanation of this provision directs the government to organise land registration in all parts of Indonesia. The holders of the relevant land rights are entitled to register their respective land in order to obtain a land right certificate that serves as a strong means of proof of the holder of the land right. The registration referred to in this provision is a *recht cadaster* land registration provision whose activities include:⁶

- 1) Land registration, mapping and bookkeeping.
- 2) Registration of land rights and transfer of rights.
- 3) Provision of proof of rights.

The implementation of land registration is *recht cadaster* aims to provide legal certainty and legal protection to holders of land rights, with evidence produced at the end of the land registration process in the form of land books and land certificates consisting of copies of land books and measurement letters. In every final product of land registration activities in the form of a land title certificate, it has many functions for its owner, and its function cannot be replaced by other objects. The first function of the land

⁵ Erna Sri Wibawanti, *Hak Atas Tanah Dan Peralihannya* (Yogyakarta: Liberty, 2013).

⁶ A.P. Parlindungan, *Pendaftaran Tanah Di Indonesia* (Bandung: Mandar Maju, 1999).

title certificate as a strong evidentiary tool, the second function of the land title certificate is able to provide a sense of security and trust the bank / creditor to provide lending facilities for a sum of money to the holder of the land title and the third function of the land title certificate has proof that the holder of the land title has been registered at the land office.⁷

The purpose of land registration is set out in Article 3 of Government Regulation No. 24 of 1997 on Land Registration, which reads:

"Land registration has a purpose:

- a. to provide legal certainty and protection to holders of rights to a parcel of land, apartment units and other registered rights so that they can easily prove themselves as holders of the rights concerned;
- b. to provide information to interested parties, including the Government, so that they can easily obtain the necessary data in conducting legal actions regarding registered land parcels and apartment units;
- c. for the implementation of orderly land administration."

One of the land registration activities is the first time land registration. Land registration for the first time is the registration of land where the object of the land plot has not been registered based on Government Regulation Number 10 of 1961 concerning Land Registration and Government Regulation Number 24 of 1997 concerning Land Registration. Land registration activities for the first time are carried out in 2 (two) ways, namely systematically and sporadically. Systematic land registration is a land registration activity carried out simultaneously by the Government in the area or part of the area of a village or *kelurahan*, while sporadic land registration is a registration activity for the first time regarding one or several land registration objects in the area or part of the area of a village/*kelurahan* individually or in bulk.

The government has a programme for the community, namely simultaneous land titling in providing legal certainty guarantees for or known as the National Agrarian Operations Project programme (hereinafter referred to as PRONA) based on the Decree of the Minister of Home Affairs Number 189 of 1981 concerning the National Agrarian Operations Project, but now the simultaneous land registration process carried out by the government is

⁷ Adrian Sutedi, *Peralihan Hak Atas Tanah Dan Pendaftarannya* (Jakarta: Sinar Grafika, 2014).

MISSING EVIDENCE OF COMMUNITY LAND OWNERSHIP

called the Complete Systematic Land Registration programme (hereinafter referred to as PTSL).⁸

The implementation of PTSL is a step by the Government to provide legal certainty and legal protection to the community in controlling a land plot. PTSL is different from previous government programmes such as the Land Administration Project (PAP), *Land Management and Policy Development Project (LMPDP)* or Adjudication Project, Larasita, and the National Agrarian Programme (PRONA). PTSL is different from previous programmes because the President monitors, evaluates and even plays a direct role in the distribution of certificates to the community.⁹

Legal certainty is very important to regulate the life of a fair society and can avoid violations that can be committed by the community and law enforcement. For this reason, it is necessary to have legal rules that can be used by the state in regulating the order of community life. The government in this case has a role in organising the land registration process and the National Land Agency as the executor of land registration assisted by other officials, including the Land Deed Official (hereinafter referred to as PPAT).

PTSL is part of the Indonesian government's Nawa Cita programme under President Joko Widodo, as mandated by Article 19 of the UUPA jo. Government Regulation Number 24 of 1997 concerning Land Registration. PTSL is regulated in Article 1 point (2) of the Regulation of the Minister of ATR/BPN Number 6 of 2018 concerning Complete Systematic Land Registration, which reads:

"Complete Systematic Land Registration, hereinafter abbreviated as PTSL, is a Land Registration activity for the first time carried out simultaneously for all Land Registration objects throughout the territory of the Republic of Indonesia in one village/kelurahan area or other names of the same level, which includes the collection of physical data and juridical data regarding one or several Land Registration objects for the purpose of their registration."

From the explanation above, it can be concluded that PTSL is the registration of all land parcels in a village area or so. Land registration in this way is considered to be able to provide greater results in a relatively shorter time, because the process of collecting land registration data is carried out

⁸ Samun Ismaya, *Hukum Administrasi Pertanahan* (Yogyakarta: Graha Ilmu, 2013).

⁹ Dian Aries Mujiburohman, "Potensi Permasalahan Pendaftaran Tanah Sistematis Lengkap (PTSL)," *BHUMI: Jurnal Agraria Dan Pertanahan* 4, no. 1 (2018), <https://doi.org/10.31292/jb.v4i1.217>.

simultaneously regarding all land parcels in a village / kelurahan and the wider community is aware of the holding of land registration, so that objections in the community can be immediately known as well.

This service improvement is related to the past experience of frequent land disputes, due to incorrect location, boundaries of land parcels or disputes over land tenure. In addition, this systematic land registration produces a land registration map that contains a map of land parcels that are registered in a connected manner, so that in the future boundary reconstruction can be carried out easily. Thus, it can avoid disputes regarding the boundaries of land parcels that still occur today. On the basis of the above provisions, it is necessary to have government action and public awareness in the context of land registration in order to realise orderly administration, orderly law and fulfil the demands of Indonesian society. The implementation of land registration will produce a final product in the form of certificates as proof of ownership of land rights.

In fact, the government in this case seems to be in a hurry, when it sees changes in the regulations and guidelines for the implementation of PTSL that are changing in the near future. It has been recorded that the PTSL regulation has changed four times. The changes are in the Regulation of the Minister of ATR / BPN Number 35 of 2016 concerning the Acceleration of the Implementation of Complete Systematic Land Registration amended by the Regulation of the Minister of ATR / BPN Number 1 of 2017 concerning amendments to the Regulation of the Minister of ATR / BPN Number 35 of 2016 concerning the Acceleration of the Implementation of Complete Systematic Land Registration, refined by the Regulation of the Minister of ATR / BPN Number 12 of 2017 concerning the Acceleration of Complete Systematic Land Registration, and finally revised again with the Regulation of the Minister of ATR / BPN Number 6 of 2018 concerning Complete Systematic Land Registration.

These changes reflect the immaturity of the strategy and concept of the PTSL programme. Regulations were set and revised in a patchwork fashion. The large number of parties involved and the many technical and "political" problems in the field account for these regulatory changes. This becomes even more complicated considering that the regulation on PTSL is only stipulated in the legal hierarchy at the Ministerial Regulation level. Meanwhile, several legal principles contained in regulations at the level of Government Regulation No. 24/1997 on Land Registration "overlap" with the Regulation of the Minister of ATR/BPN which regulates the acceleration of the PTSL

MISSING EVIDENCE OF COMMUNITY LAND OWNERSHIP

programme.

This PTSL programme can be implemented if the physical data and juridical data for one plot of land are held by one person who owns the land, but in reality in the object of research there are differences in control of juridical data and physical data on one plot of land and the community does not really understand the importance of land data collection and many obstacles that occur in the field. One of them is based on Article 22 paragraph (2) of the Regulation of the Minister of ATR / BPN Number 6 of 2018 concerning Complete Systematic Land Registration, which reads:

"In the event that evidence of community land ownership is incomplete or nonexistent, it can be completed and proven by a written statement regarding the ownership and/or physical control of the land plot in good faith by the person concerned."

This can lead to disputes in the implementation of land registration through PTSL.

At the beginning of 2017, there were 126,000,000 (one hundred and twenty-six million) parcels of land in Indonesia, of which only 51,000,000 (fifty-one million) were certified. Another 79,000,000 (seventy-nine million) have not been officially registered, and are therefore targeted for acceleration of PTSL.¹⁰ One of the regions in Indonesia that participated in the PTSL programme is Malang Regency. Malang Regency is located in East Java Province with an area of 3,534.86 km² (three thousand five hundred thirty-four point eighty-six square kilometres) or equal to 353,486 ha (three hundred fifty-three thousand four hundred eighty-six hectares).¹¹ For the PTSL programme in 2023, the PTSL quota for Malang District is 53,000 (fifty-three thousand) parcels of land from 19 villages in 5 sub-districts. This quota is the highest in East Java Province.

Based on the background description above, this research focuses on problems that raise questions, how are the obstacles in Article 22 Paragraph (2) of the Regulation of the Minister of ATR / BPN Number 6 of 2018 concerning Complete Systematic Land Registration (PTSL) related to incomplete or non-existent proof of community land ownership at the Malang Regency ATR / BPN Office.

¹⁰ Indonesia.go.id., "Tanah Untuk Rakyat," 2018, <https://indonesia.go.id/kategori/indonesia-dalam-angka/128/tanah-untuk-rakya>.

¹¹ Jatim BPK, "Kabupaten Malang," n.d., <https://jatim.bpk.go.id/kabupaten-malang/>.

Method

The type of writing used in this research is empirical juridical with a sociological juridical approach, because this writing examines the implementation of Article 22 paragraph (2) of the Regulation of the Minister of ATR / BPN Number 6 of 2018 concerning Complete Systematic Land Registration regarding people who experience incompleteness and do not even have proof of ownership of land implemented by the Malang Regency ATR / BPN Office and sociologically by looking at the implementation of these regulations in the Malang Regency community held by the Malang Regency ATR / BPN Office. The data sources in this paper use two sources, namely primary data sources and secondary data sources. Primary data sources are obtained from the Malang Regency ATR / BPN Office and secondary data from primary legal materials in the form of Article 28 D paragraph (1) and Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia; Article 2 paragraph (3), Article 19 paragraph (1), Article 48 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles; Article 1 point (1) and Article 3 of Government Regulation Number 24 of 1997 concerning Land Registration; and Article 22 paragraph (2) of Regulation of the Minister of ATR / BPN Number 6 of 2018 concerning Complete Systematic Land Registration and secondary legal materials consisting of literature books.

Data collection techniques are interviews with employees of the ATR / BPN Office of Malang Regency, direct observation in land registration service activities at the ATR / BPN Office of Malang Regency, and documentation by collecting laws and regulations relating to PTSL, documents, data, and other literature that have a relationship with the research conducted. The data analysis technique used in this writing is descriptive analysis.

Obstacles in Article 22 Paragraph (2) of Regulation of the Minister of ATR/BPN Number 6 of 2018 on Complete Systematic Land Registration (PTSL) Related to Incomplete or Absent Proof of Community Land Ownership

Land registration by Boedi Harsono is defined as "Land registration is a series of activities carried out by the Government continuously, continuously, and regularly, including collecting, processing, bookkeeping, and presenting and maintaining physical and juridical data in the form of maps and lists, regarding land parcels and units of flats, including the provision of certificates as proof of rights for land parcels that already have rights and ownership rights to units of flats and certain rights that encumber them".¹² Land registration is an important issue in the UUPA, because land registration is the process by which proof of ownership of land rights is born for the community. Land registration aims for legal certainty, provision of information, and the achievement of an orderly culture of land administration in the community. In this case, orderly land administration can be achieved by the creation of a good information centre on land parcels, making it easier for the government to obtain the necessary data in conducting legal actions regarding registered land parcels and apartment units.

The implementation of land registration throughout Indonesia is based on Government Regulation No. 24 of 1997 concerning Land Registration. The implementation of land registration is organised by the National Land Agency. The implementation of land registration includes land registration activities for the first time and maintenance of land registration data (Article 11).¹³ Land registration for the first time is a registration activity carried out on land registration objects that have not been registered based on Government Regulation No. 10/1961 and Government Regulation No. 24/1997. Land registration for the first time is carried out through systematic land registration and sporadic land registration. Systematic land registration is a land registration activity for the first time carried out simultaneously

¹² Boedi Harsono, *Hukum Agraria Indonesia* (Jakarta: Djambatan, 2005).

¹³ Arba, *Hukum Agraria Indonesia*, 2015th ed. (Jakarta: Sinar Grafika, 2015). See also Widya Puspa Ningrum Rauf, "The Role of the Gorontalo District National Land Agency Service in the Implementation of the Systematic Complete Land Registration Program (PTSL)." *Journal of Private and Commercial Law* 4, no. 1 (2020): 1-13.

covering all unregistered land registration objects in the area or part of the area of a Village/Kelurahan. Systematic land registration is organised on the initiative of the Government based on a long-term and annual work plan and is carried out in areas determined by the Minister of Agrarian Affairs/Head of BPN. In the event that a Village/Kelurahan has not been designated as a systematic land registration area, its registration is carried out through sporadic land registration.

Sporadic land registration is a land registration activity for the first time regarding one or several land registration objects in the area or part of the area of a Village/Kelurahan individually or in bulk. Sporadic land registration is carried out at the request of an interested party, namely the party entitled to the land registration object concerned or his/her proxy.

Every PTSL activity is aimed at all land registration objects in all regions of the Republic of Indonesia, both those that already have boundary marks or those that will be determined by the boundary marks in PTSL activities.¹⁴ PTSL is a programme provided by the ATR/BPN Office, including the Malang Regency ATR/BPN Office to all villages in Malang Regency. The PTSL target in Indonesia is to register 126,000,000 parcels of land by 2025 with products in the form of Land Parcel Maps (hereinafter PBT) and Land Rights Certification (hereinafter SHAT). For the PTSL programme in 2023, the PTSL quota for Malang Regency is 53,000 (fifty-three thousand) parcels of land from 19 villages in 5 sub-districts. This quota is the highest in East Java Province. Currently, Malang District has 55,272 PBT targets and 33,994 SHAT targets.

Based on the results of interviews with Mr Kamdani as ATR / BPN Malang Regency staff regarding the requirements in PTSL for the community are completing personal identity, PTSL participant registration form, physical possession statement form, proof of title, Land and Building Tax Notification Letter (SPPT PBB) if any, other necessary documents. The juridical data collection process in the field is carried out using the *Survey My Land* Application. The PTSL implementation process as shown on Figure 1.

¹⁴ Isdiyana Kusuma Ayu, "Kepastian Hukum Penguasaan Tanah Melalui Pendaftaran Tanah Sistematis Lengkap Di Kota Batu," *Mimbar Hukum* 31, no. 3 (2019): 338–51.

MISSING EVIDENCE OF COMMUNITY LAND OWNERSHIP

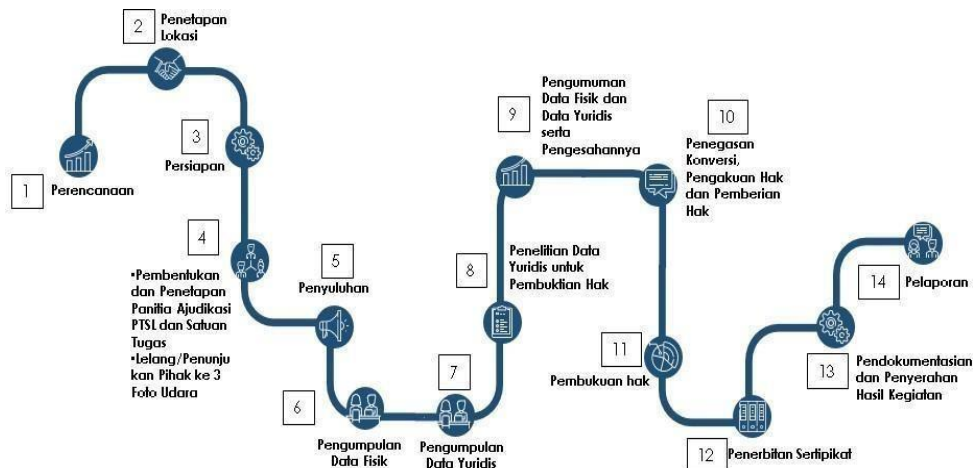


FIGURE 1. PTSL Process

Source: Technical Guidelines for PTSL Integrated Physical Data Collection 2023

Notes:

- 1) Planning;
- 2) Location determination;
- 3) Preparation;
- 4) Establishment and determination of PTSL adjudication committee and taskforce;
- 5) Extension;
- 6) Physical data collection
- 7) Collection of juridical data;
- 8) Juridical data research for proof of rights;
- 9) Announcement of physical and juridical data and its ratification;
- 10) Affirmation of conversion, recognition of rights and granting of rights;
- 11) Bookkeeping rights;
- 12) Issuance of certificates;
- 13) Documentation and submission of activity results; and
- 14) Reporting.

In terms of fulfilling juridical evidence at the PTSL stage point 7 (seven) in accordance with Article 22 paragraph (2) of the Regulation of the Minister of ATR / BPN Number 6 of 2018 concerning PTSL, if the community does not have evidence of incomplete or non-existent land ownership, the applicant can complete it by making a written statement regarding the ownership and / or physical control of the land plot in good faith by the person concerned witnessed by two witnesses from the surrounding environment who do not have blood or family relations and can be held accountable both civilly and criminally.¹⁵

¹⁵ Isdiyana Kusuma Ayu, "Problematika Pelaksanaan Pendaftaran Tanah Melalui Pendaftaran Tanah Sistematis Lengkap di Kota Batu," *Legality : Jurnal Ilmiah Hukum* 27, no. 1 (2019): 27, <https://doi.org/10.22219/jihl.v27i1.8956>. See also Sekar Arum

The statement letter that replaced the deed of transfer made by the PPAT did not have perfect evidentiary power, because it was made by the applicant himself and witnessed by two witnesses. The affidavit is an underhand letter that has weak evidentiary power when compared to an authentic deed. However, what is meant by an affidavit in good faith does not have definite parameters to prove that the affidavit was made in good faith by the applicant, so that to prove that the applicant is the true owner of the land parcel, another way needs to be done to prove that the applicant is the rightful owner of the land parcel, so that one day it can be disputed by other people who are able to prove otherwise.

The ATR / BPN Office in this case has stages to ensure the statement letter, the stages carried out by the ATR / BPN Office are in accordance with Article 24 Paragraph (4) of the Regulation of the Minister of ATR / BPN Number 6 of 2018 concerning PTSL that: *"To fulfil the principle of publicity in proving land ownership, juridical data and physical data of land parcels with and maps of land parcels are announced using the Physical Data and Juridical Data Announcement form for 14 (fourteen) calendar days at the PTSL Adjudication Committee Office and the Village Head Office"*.

In accordance with what is stated in the article above, to validate or prove that the land plot is owned by the applicant, namely publication or announcement is made for a period of 14 (fourteen) calendar days, if within that period there is no objection or no party objects to the land plot owned and is not in dispute, and states that the land is not a government asset and not a forest area, then the Malang Regency ATR / BPN Office can proceed with making the Minutes of Ratification of the Announcement of Physical data and Juridical data. When PTSL Participants are found in the future to have bad faith in the ownership of the land, they will be subject to civil and criminal sanctions. Meanwhile, the PTSL Adjudication Committee of the ATR / BPN Office of Malang Regency will not be responsible for this. This provision can be interpreted as follows:

- a) The physical control of the land parcel in question is 20 (twenty) years or more consecutively, not less than 20 (twenty) years and or in the interval. For example, a new tenure of 10 (ten) years, due to certain events, it is transferred to another party, then it will be 20 (twenty) years

Rahmawati, Gassa Hadibroto, and Ana Silviana. "Implementation of Registration of Ex-Customary Land through Complete Systemic Land Registration in Pemalang Regency." *Journal of Law and Legal Reform* 3, no. 4 (2022): 431-456.

MISSING EVIDENCE OF COMMUNITY LAND OWNERSHIP

back to the original tenure, and the land tenure is not contested by other parties in accordance with Article 24 paragraph (2) of Government Regulation Number 24 of 1997 concerning Land Registration.

- b) A statement of physical control of the land plot must be witnessed by at least 2 (two) witnesses. This provision has the potential for falsification of the statement letter, which should be strengthened by the testimony of a trustworthy person, for example witnessed by 2 witnesses and known by RT, RW, and village/kelurahan. There are legal consequences if found falsifying the contents and signing of the statement letter, namely being willing to be prosecuted before a judge criminally or civilly for giving false information.

If there is an element of untruth in the statement letter, it is not the responsibility of the PTSL Adjudication Committee.¹⁶ This is a form of self-protection from the legal snares of the PTSL Adjudication Committee and this can be justified because in the aspect of proof, the Adjudication Committee does not have the authority of material test rights regarding the truth of the statement letter, only formal test rights regarding administrative requirements. For example, checking the statement letter has been signed by the parties, the truth about the suitability of the person who signed is not the authority of the Adjudication Committee. To minimise the occurrence of land dispute cases, the role and coordination of the village/kelurahan should not be ignored in making a Statement of Physical Control of Land Plots as formal evidence of control over land in good faith must be recognised and justified by the customary law community or the village/kelurahan concerned.

Furthermore, the element of good faith from the fact of physically controlling, using, utilising, and maintaining the land for generations within a certain time and/or obtaining it in a way that does not violate the provisions of laws and regulations. Good faith is proven by the PTSL participant's statement that states:

¹⁶ I Gusti Ngurah Anom, and I. Wayan Eka Artajaya, "Kekuatan Pembuktian Data Fisik Dan Data Yuridis Dalam Pendaftaran Tanah Sistematis Lengkap Di Kabupaten Bangli, Provinsi Bali," *Journal of Economic and Business Law Review* 1, no. 1 (2021): 32–49. See also Endra Wijaya, et al. "Konsultasi Hukum Massal mengenai Sengketa Hukum Pertanahan di Kelurahan Sukahati, Bogor, Jawa Barat." *Jurnal Pengabdian Hukum Indonesia (Indonesian Journal of Legal Community Engagement) JPHI* 3, no. 2 (2021): 183-192; Fairus Augustina Rachmawati, Shafa Amalia Choirinnisa, and Latif Latif. "Integrated Land Registration System: Between Legal Certainty and Challenges (Case of Semarang City)." *Indonesian Journal of Advocacy and Legal Services* 3, no. 2 (2021): 217-232.

- a) there are no objections from other parties to the land owned or not in a state of dispute; and
- b) does not include or is not an asset of the Government, Regional Government, or State-Owned Enterprises/Region-Owned Enterprises; or Forest Estate (Article 22).

Basically, good faith is interpreted as honesty, honesty of the right holder in acquiring the land, honesty in fulfilling the conditions that have been determined. The provision of good faith is the opposite of bad faith or dishonesty. It is difficult to identify good faith because it has an abstract meaning that gives rise to different meanings. Good faith in the sense of Article 22 is honest in physically controlling the land and honest in fulfilling the conditions that have been determined. The measure of good faith is carried out by the Adjudication Committee in the form of inward estimates that the applicant has fulfilled the administrative requirements that have been determined.

The problems that occurred in Malang District resulted in PTSL products being grouped into K1, K2, K3, and K4 products. The provisions regarding clusters in PTSL are explained in Article 25 of the Regulation of the Minister of ATR / BPN Number 6 of 2018 concerning PTSL, which reads:

- 1) The completion of PTSL activities consists of 4 (four) clusters, including:
 - a. Cluster 1, i.e. land parcels whose physical and juridical data are eligible for issuance of Land Rights Certificates;
 - b. Cluster 2, i.e. land parcels whose physical and juridical data are eligible for issuance of Land Rights Certificates but there are court cases and/or disputes;
 - c. Cluster 3, namely land parcels whose physical and juridical data cannot be recorded and a Land Rights Certificate issued because the subject and/or object of the right has not fulfilled certain requirements stipulated in this Ministerial Regulation; and
 - d. Cluster 4, i.e. land parcels whose objects and subjects are already registered and have certificates of Land Rights, both those that have not been mapped and those that have been mapped but are not in accordance with field conditions or there are changes in physical data, must be mapped onto the Complete Systematic Land Registration Map.

MISSING EVIDENCE OF COMMUNITY LAND OWNERSHIP

In the case of this research based on the results of interviews with Mr Kamdani as the staff of ATR / BPN Malang Regency, land registration is included in Cluster 2 if there is still a dispute over the ownership of the land, because the physical data and juridical data are refuted by third parties, and both recognise that the land belongs to the parties, and the non-litigation settlement resolved through the Adjudication Committee does not reach common ground or agreement. If something like that happens, then the issuance of the certificate cannot be carried out, because the resolution of the problem is through the court, to determine which party is entitled to the disputed land. Although there is still an ownership dispute over the land, the measurement and mapping of the land is still carried out, but the certificate of ownership of the land has not been issued because it is still waiting for a court decision stating who is entitled to the land, and after there is a decision that is permanent / *incracht*, then the certificate of title will be issued on behalf of those who have been listed in the court decision.

The convenience provided by the government for the community is meaningless if there are parties who object to the land submitted as the object of PTSL, so that problems arise in the PTSL process. In the implementation of PTSL at the ATR / BPN Office of Malang Regency, if a problem arises, the first step taken is to place the land status in Cluster 2 (K2) so that the land certificate cannot be continued because there is still a dispute between the holders of physical data and juridical data, each of which recognises that the land belongs to the parties. Although the problem arose, the measurement and mapping of the land was still carried out.

Against a land case submitted or complained and handled by the National Land Agency, the settlement is carried out in stages, according to the Regulation of the Head of the National Land Agency Number 3 of 2011 concerning Management of Land Case Assessment and Handling as follows:¹⁷

- a. Complaints and information services on land cases;
- b. Assessment of land cases;
- c. Land case handling;
- d. Settlement of land cases; and
- e. Legal aid and legal protection

¹⁷ Muhamad Burhanuddin, Lidya Christina Wardhani, and Faizal Adi Surya, "Pelaksanaan Pendaftaran Tanah Sistematis Lengkap (Ptl) Sebagai Upaya Untuk Mencegah Sengketa Kepemilikan Dan Batas Tanah Di Kantor Pertanahan Kabupaten Kudus," *Jurnal Suara Keadilan* 23, no. 1 (2022): 51–61, <https://doi.org/10.24176/sk.v23i1.8555>.

The efforts of the Malang Regency ATR / BPN Office in overcoming these obstacles by conducting mediation, if each party remains adamant about the land. Mediation is one of the dispute resolution processes that is faster and cheaper, and can provide greater access to the parties to find a satisfactory solution and fulfil a sense of justice. Mediation is an alternative to out-of-court dispute resolution that is quite often used. Mediation as an alternative to dispute resolution itself was only introduced in Indonesia in 1997, when Indonesia was hit by an economic crisis, which then led to a political crisis which triggered many major conflicts in Indonesia, both vertical and horizontal conflicts. This then inspired the birth of *conflict* management techniques, followed by the birth of many study centres on ADR (*Alternative Disputes Resolution*) or also known as APS (*Alternative Dispute Resolution*) in handling a dispute or conflict.¹⁸

The existence of mediation in resolving disputes through a negotiation process to obtain agreement between the parties with the assistance of a mediator. In handling PTSL problems through mediation, the ATR / BPN Malang Regency calls both parties to come to the ATR / BPN Malang Regency Office to carry out mediation, and the parties are given the same opportunity to convey their respective arguments. If the situation is not possible, such as a tense situation with the potential for quarrels to arise, it is possible to summon the parties separately to be asked what plans will be taken to achieve peace.

After various peace efforts were carried out in the mediation, and the parties to the dispute could not reach an agreement to reconcile so that a certificate of ownership could be issued, the ATR / BPN Malang Regency made an official report stating that the dispute between the parties over ownership of different physical and juridical data on property rights to the land could not be reached peace, so that a certificate of ownership could not be issued. If it cannot be amicably mediated, then the dispute is taken to the "green table" through the litigation process in court.¹⁹ The parties are welcome to resolve any issues arising from the issuance of a Certificate of Title to the land through the courts, to determine which party is entitled to the land.

¹⁸ Achmad Romsan, *Alternative Dispute Resolution, Teknik Penyelesaian Sengketa Di Luar Pengadilan: Negosiasi Dan Mediasi* (Malang: Setara Press, 2016).

¹⁹ Riska Fitriani, "Penyelesaian Sengketa Lahan Hutan Melalui Proses Mediasi Di Kabupaten Siak," *Jurnal Ilmu Hukum* 3, no. 1 (2013), <https://doi.org/10.30652/jih.v3i01.1031>.

MISSING EVIDENCE OF COMMUNITY LAND OWNERSHIP

While the parties are still taking legal action, the certificate is not processed by ATR/BPN Malang Regency, because the problem is still being processed in court. After a court decision decides who is entitled to the land, the name decided in the decision will be included in the certificate, and the issuance of the certificate of ownership of the land will be issued in the PTSL programme the following year.

The provisions of Article 32 paragraph (1) of Government Regulation No. 24 of 1997 concerning Land Registration are prone to disputes, because certificates as evidence of land rights cannot guarantee their veracity.²⁰ As in Article 32 paragraph (2) of Government Regulation No. 24 of 1997 concerning Land Registration states that:

"In the event that a land certificate has been issued legally in the name of a person or legal entity who acquired the land in good faith and is in actual possession of it, another party who feels that he has a right to the land can no longer demand the exercise of that right if within 5 (five) years of the issuance of the certificate no written objection has been filed by the certificate holder with the Head of the Land Office concerned, nor has a lawsuit been filed in court concerning the possession of the land or the issuance of the certificate."

In the explanation of Article 32 paragraph (2) of Government Regulation No. 24/1997 on Land Registration, the state does not guarantee the accuracy of the data presented because Indonesia adopts a negative publication system that contains positive elements. This negative publication system that contains positive elements, which in Article 19 paragraph (2) letter c of the UUPA states that one of the activities in land registration is the issuance of a certificate of proof of rights that acts as a strong evidentiary tool. This negative publication system containing positive elements is implied in strong evidence as stated in Article 19 paragraph (2) letter c, Article 23 paragraph (2), Article 32 paragraph (2) and Article 38 paragraph (2) of the UUPA. Article 32 paragraph (1) of Government Regulation No. 24/1997 states that a certificate is a certificate of proof of title which serves as a strong means of evidence regarding physical and juridical data.

With the use of the publication system adopted by Indonesia at this

²⁰ Indri Hadisiswati, "Kepastian Hukum Dan Perlindungan Hukum Hak Atas Tanah," *Ahkam: Jurnal Hukum Islam* 2, no. 1 (2014): 122, <https://doi.org/10.21274/ahkam.2014.2.1.118-146>.

time, the negative publication system containing positive elements, according to the researcher, needs improvement as seen in which Indonesia does not adhere to a pure negative publication system but a negative publication system containing positive elements because Indonesia uses a rights registration system with this registration will produce evidence of rights, namely certificates that can be used as strong evidence. With this land registration provides legal certainty to someone who registers the land this is contained in Article 19 paragraph (1) of the UUPA.

Although Indonesia adheres to a negative publication system that contains positive elements, it still requires the BPN to administer physical and juridical land data, so the substance of Article 32 of Government Regulation No. 24 of 1997 concerning Land Registration will not cause legal impacts or problems in the future because it will be difficult or even impossible to find new evidence related to physical and juridical data in processing certificates that could result in the certificate being annulled or even cancelled. Article 32(1) of Government Regulation No. 24/1997 on Land Registration states that certificates are strong evidence of rights, which means that as long as it cannot be proven otherwise, the physical and juridical data must be accepted as correct because the physical and juridical data must match the data in the land book.²¹

Conclusion

This study concluded that the Malang District ATR/BPN Office is implementing the PTSL programme in accordance with Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 6 of 2018 concerning Complete Systematic Land Registration. However, there are several problems regarding PTSL participants who do not have proof of land ownership or are incomplete, so in accordance with Article 22 paragraph (2) which requires PTSL participants to make a written statement in good faith. Obstacles encountered by the Malang Regency ATR / BPN Office regarding disputes caused by physical data and juridical data that are refuted by third parties, and

²¹ Nurul Khomariyah Syahroni and Gunanegara Gunanegara, "Perlindungan Hukum Pemegang Sertipikat Hak Milik Yang Diterbitkan Kembali Sertipikat Atas Nama Pihak Ketiga Dalam Program Pendaftaran Tanah Sistematis Lengkap [Legal Protection of Property Certificate Holders Which Land Is Reissued Property Certificates B," *Notary Journal* 2, no. 2 (2022): 152, <https://doi.org/10.19166/nj.v2i2.5766>.

both recognise that the land belongs to the parties. Additionally, this study also highlighted that efforts from the Malang Regency ATR/BPN Office with non-litigation settlement or mediation as the first step in resolving the dispute through the Adjudication Committee or mediator to reach common ground or agreement. If there is no agreement through mediation, then the issuance of the certificate cannot be carried out, because the resolution of the problem is through court channels, to determine the party entitled to the disputed land plot.

References

- Anom, I. Gusti Ngurah, and I. Wayan Eka Artajaya. "Kekuatan Pembuktian Data Fisik Dan data Yuridis dalam Pendaftaran Tanah Sistematis Lengkap di Kabupaten Bangli, Provinsi Bali." *Journal of Economic and Business Law Review* 1, no. 1 (2021): 32-49.
- Arba, Arba. *Hukum Agraria Indonesia*, 2015th ed. (Jakarta: Sinar Grafika, 2015).
- Ayu, Isdiyana Kusuma. "Kepastian Hukum Penguasaan Tanah Melalui Pendaftaran Tanah Sistematis Lengkap Di Kota Batu," *Mimbar Hukum* 31, no. 3 (2019): 338–351.
- Ayu, Isdiyana Kusuma. "Problematika Pelaksanaan Pendaftaran Tanah Melalui Pendaftaran Tanah Sistematis Lengkap di Kota Batu," *Legality: Jurnal Ilmiah Hukum* 27, no. 1 (2019): 27, <https://doi.org/10.22219/jihl.v27i1.8956>.
- Burhanuddin, Muhamad, Lidya Christina Wardhani, and Faizal Adi Surya, "Pelaksanaan Pendaftaran Tanah Sistematis Lengkap (Ptl) Sebagai Upaya Untuk Mencegah Sengketa Kepemilikan Dan Batas Tanah Di Kantor Pertanahan Kabupaten Kudus," *Jurnal Suara Keadilan* 23, no. 1 (2022): 51–61, <https://doi.org/10.24176/sk.v23i1.8555>.
- Fitriani, Riska. "Penyelesaian Sengketa Lahan Hutan Melalui Proses Mediasi Di Kabupaten Siak," *Jurnal Ilmu Hukum* 3, no. 1 (2013), <https://doi.org/10.30652/jih.v3i01.1031>.
- Hadisiswati, Indri. "Kepastian Hukum Dan Perlindungan Hukum Hak Atas Tanah," *Ahkam: Jurnal Hukum Islam* 2, no. 1 (2014): 122, <https://doi.org/10.21274/ahkam.2014.2.1.118-146>.
- Harsono, Boedi. *Hukum Agraria Indonesia* (Jakarta: Djambatan, 2005).
- Harsono, Boedi. *Hukum Agraria Indonesia : Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaanya* (Jakarta: Djambatan, 2005).
- Imam, Soetikno. *Politik Agraria Nasional, Gadjah Mada University Press, Yogyakarta* (Yogyakarta: Gajah Mada University Press, 1994).

- Indonesia.go.id., "Tanah Untuk Rakyat," 2018, <https://indonesia.go.id/kategori/indonesia-dalam-angka/128/tanah-untuk-rakyat>.
- Ismaya, Samun. *Hukum Administrasi Pertanahan* (Yogyakarta: Graha Ilmu, 2013).
- Jatim BPK, "Kabupaten Malang," n.d., <https://jatim.bpk.go.id/kabupaten-malang/>.
- Mujiburohman, Dian Aries. "Potensi Permasalahan Pendaftaran Tanah Sistematis Lengkap (PTSL)," *BHUMI: Jurnal Agraria Dan Pertanahan* 4, no. 1 (2018), <https://doi.org/10.31292/jb.v4i1.217>.
- Parlindungan, A.P. *Pendaftaran Tanah Di Indonesia* (Bandung: Mandar Maju, 1999).
- Rachmawati, Fairus Augustina, Shafa Amalia Choirinnisa, and Latif Latif. "Integrated Land Registration System: Between Legal Certainty and Challenges (Case of Semarang City)." *Indonesian Journal of Advocacy and Legal Services* 3, no. 2 (2021): 217-232.
- Rahmawati, Sekar Arum, Gassa Hadibroto, and Ana Silviana. "Implementation of Registration of Ex-Customary Land through Complete Systemic Land Registration in Pemalang Regency." *Journal of Law and Legal Reform* 3, no. 4 (2022): 431-456.
- Rauf, Widya Puspa Ningrum. "The Role of the Gorontalo District National Land Agency Service in the Implementation of the Systematic Complete Land Registration Program (PTSL)." *Journal of Private and Commercial Law* 4, no. 1 (2020): 1-13.
- Romsan, Achmad. *Alternative Dispute Resolution, Teknik Penyelesaian Sengketa Di Luar Pengadilan: Negosiasi Dan Mediasi* (Malang: Setara Press, 2016).
- Santoso, Urip. *Perolehan Hak Atas Tanah* (Jakarta: Kencana, 2012).
- Sutedi, Adrian. *Peralihan Hak Atas Tanah Dan Pendaftarannya* (Jakarta: Sinar Grafika, 2014).
- Syahroni, Nurul Khomariyah, and Gunanegara Gunanegara. "Perlindungan Hukum Pemegang Sertipikat Hak Milik yang Diterbitkan Kembali Sertipikat atas Nama Pihak Ketiga dalam Program Pendaftaran Tanah Sistematis Lengkap [Legal Protection of Property Certificate Holders which Land is Reissued Property Certificates by Other Parties through PTSL]." *Notary Journal* 2, no. 2 (2022): 152-165. <https://doi.org/10.19166/nj.v2i2.5766>.
- Wibawanti, Erna Sri. *Hak Atas Tanah Dan Peralihannya* (Yogyakarta: Liberty, 2013).
- Wijaya, Endra, et al. "Konsultasi Hukum Massal mengenai Sengketa Hukum Pertanahan di Kelurahan Sukahati, Bogor, Jawa Barat." *Jurnal Pengabdian Hukum Indonesia (Indonesian Journal of Legal Community Engagement) JPHI* 3, no. 2 (2021): 183-192.