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ISSN 2809-672X (Online)  
**IUS POSITUM (Journal of Law Theory and Law Enforcement)**

<https://journal.jfpublisher.com/index.php/jlte>

Vol. 2 Issue. 2, April 2023

[doi.org/10.56943/jlte.v2i2.284](https://doi.org/10.56943/jlte.v2i2.284)

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## **The Legal Footing of Petok D as The Evidence of Land Ownership and Rights**

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### **ABSTRACT**

*Land tenure is not only physically owned, but juridical ownership is also required. One of the policies that the government can implement is to provide legal certainty and protection of ownership of land rights as regulated in Government Regulation No. 24/1997 concerning land registration. This research aims to determine the characteristics of evidence on land ownership that can be recognized as a certificate and to find out how judges' ratio decided a certificate as the evidence of ownership. The method used in this research is the juridical-normative research method which is the legal research to examine issues from the norm's perspective. The approach of this research are statutory, conceptual, and case approaches. Based on the research findings, it can be concluded that the characteristics of ownership of land rights evidence that are recognized as exceeding certificates are the acquisition of land objects based on legal rights, details of land history based on evidence, physical possession of land, evidence of land object tax payments and the existence of witness statements of residents related to physical land tenure; The judge's ratio decidendi overriding the land certificate means that, the Defendant/Plaintiff in the counterclaim can prove the acquisition of land plot objects along with a clear history of the land.*

**Keywords:** Certificate, Evidence, Land Ownership and Rights

## INTRODUCTION

The regulation of relationship between land and humans also land and the existence of State has experienced a significant shift since the enactment of Basic Agrarian Law (hereinafter referred to as UUPA). The enactment of Indonesian Basic Agrarian Law in such a way erased colonial land regulation, which was still fully patterned on the Dutch East Indies land law. The existence of land after Indonesian Basic Agrarian Law gave hope to Indonesian people, who at that time were still in transition to become a prosperous nation. One of the conceptions of land law enactment contain in Agrarian Law is the hope to prosper people. Fundamentally, this concept is also contained in the provisions of Article 33 of 1945 Constitution, which states that every forms of land and water within are controlled by the State and used for the prosperity of people.<sup>1</sup> Moreover, the concept of State Control is also familiar, which in a broad sense states that the presence of State after the enactment of UUPA (Basic Agrarian Law) as a nation land law gives a role for the State to create the aspects of land law that are not only aimed at the prosperity of people, but also obliged to.<sup>2</sup>

In relation to land arrangements, the main concept is not merely having control over the land, physicality but also juridically. This kind of control is called control of land rights. In terms of reach State's control, the role of participation is not absolute to control the right, However if the land as vital object of regulation has been legally controlled by others, then the role to control the State is sufficient. Thus, the role to have master control is not absolute.

Different from the principle of control in colonial era, as the principle of *domain verklaring*, which means that every forms of land rights as long as their ownership cannot be proven, considered as the state land. It is clear that this principle contains the absolute role under State control. After the non-application of national land law, it is the duty of State as the power of the UUPA (Basic Agrarian Law) to carry out the assignment to provide the greatest prosperity for people. An implementation to provide the prosperity of people in terms of land arrangements is to provide legal certainty and protection by deciding the ownership of land rights. After the enactment of UUPA, State ratified Government Regulation Number 10/1961 as amended by Government Regulation Number 24/1997 concerning on Land Registration (hereinafter referred as Land Registration Regulation), in which one of the vital organizers was handled by National Land Agency (BPN). Nowadays, in development era not only infrastructure that developed but also economic shifts that affect every forms of

<sup>1</sup> Rachmat Trijono, *Hak Menguasai Negara Di Bidang Pertanahan* (Jakarta: Badan Pembinaan Hukum Nasional, 2015), [https://www.bphn.go.id/data/documents/penelitian\\_hak\\_menguasai\\_negara\\_di\\_bid\\_pertanahan.pdf](https://www.bphn.go.id/data/documents/penelitian_hak_menguasai_negara_di_bid_pertanahan.pdf).

<sup>2</sup> Julius Sembiring, "Hak Menguasai Negara Atas Sumber Daya Agraria," *Bhumi: Jurnal Agraria dan Pertanahan* 2, no. 2 (2016).

actions related to land rights; the latest regulation related to BPN was passed through Presidential Regulation Number 48/2020 concerning on National Land Agency.<sup>3</sup> Then, to the functions referred above, National Land Agency also has the fundamental authority to provide legality regarding the ownership of land rights which is evidenced by the issuance of certificates of land rights as. The functions and authorities carried out by National Land Agency as a form State control in sense of providing prosperity for people are clearly needed. Therefore, National Land Agency required the state to have a vision continue to improve in the management and administration of land rights in order to be related with the principle of State control as continuous control in future.<sup>4</sup>

The land tenure system in Indonesia adheres to negative system with a positive tendency, which is also called as the reporting system for land tenure in Indonesia. The system states that, according to the data, until it is given to the State, National Land Agency statement is not absolute, which means that the state cannot guarantee the correctness of the data. The existence of this system certainly provides its own weaknesses and does not provide legal certainty for land rights holders. Land title certificates issued and legitimized by the National Land Agency are strong evidence but not absolute evidence. This certainly raises the question of how the function and authority of National Land Agency is related to the principles of land registration or more fundamentally has created prosperity for people as referred in Article 33 Paragraph (3) of 1945 Constitution. As an analytical knife, this research provides a concrete example of a court decision that has obtained legal force but as in Surabaya District Court Decision Number 1264/Pdt.G/2019/PN.SBY. as the decision, there are facts where *Petok D* consider as proof of land ownership granted by the Panel of Judges by defeating the land title certificate (in this case the land title).

It should be understood that the issuance of a land certificate has gone through several processes such as mapping, data collection and assessment of physical and juridical data. If the certificate can later be canceled by the Court, the legal action that has been carried out will seem futile. Then, the existence of land title certificate through a sale - purchase before Notary Decision is an act of good faith buyer as stated in Supreme Court Circular Letter No. 4/2016 concerning on the Implementation of Formulation of the Results of 2016 Plenary Meeting of Supreme Court as Guidelines for the Implementation of Court Duties which stated that the criteria for a good faith buyer is to carry out the sale-purchase procedure with legal procedures and valid documents, with a good examination of the object of the land agreed upon. Based on the explanation above, this research aims to discuss the position of *Petok D* as evidence of ownership of land

<sup>3</sup> Presidential Regulation, *Article 3 Letter c of Presidential Regulation Number 48/2020 Concerning on National Land Agency*, 2020.

<sup>4</sup> Suwardi and Arief Dwi Atmoko, "Pembaharuan Hukum Agraria Di Indonesia," *Jurnal Hukum Bisnis* 3, no. 2 (2019): 229–244.

rights in Indonesia juxtaposed with the position of certificates as evidence of land rights.

## LITERATURE REVIEW

### Legal Certainty Theory

The notion of legal certainty is something that cannot be separated from justice and legal benefits in a frame of the goal to achieve the law itself. However, the fact is, only few legal certainties understand the meaning in its application because legal certainty is always seen as subjective system by law enforcers.<sup>5</sup> Every aspects of social life in Indonesia are regulated by law. Law is a tool for government that can be used to regulate and order society. In law, there are 3 dimensions of elements that must be contained in it as an identity value.

Normatively, legal certainty can be interpreted as a regulation that is made and legalized with certainty. Therefore, legal certainty theory a legal regulation does not cause conflict in the norms that apply in society. Certainty itself is the essence of legal implementation. The order of society is closely related to the law because order is closely related to the essence of certainty. From the existence of order, a person will live with certainty in carrying out the necessary activities in society.<sup>6</sup> Legal protection is one of the most important elements of law. In a country there will be reciprocity between the state and society. Legal protection is the right of every citizen, legal protection is a protection given to legal subjects in form of both preventive and repressive devices. According to Satjipto Rahardjo, legal protection is to provide protection to human rights that are harmed by others and this protection is given to the community to equally have the law.<sup>7</sup> According to Phillipus M. Hadjon, legal protection is a rule that will be able to protect one case from another.<sup>8</sup> Furthermore, legal protection can be divided into 2 (two), as follows:

1. Preventive Legal Protection

In this preventive legal protection, legal subjects are given the opportunity to submit objections or opinions before a government decision takes definitive form. The aim is to prevent any disputes. Therefore, preventive legal protection is important for governments based on freedom of action.

2. Repressive Legal Protection

Repressive legal protection means final legal protection in form of sanctions such as the application of fines, imprisonment and other

<sup>5</sup> Miriam dkk Budiardjo, *Pengantar Ilmu Politik*, Edisi 1. (Tangerang Selatan: PT. Gramedia Pustaka Utama, 2017).

<sup>6</sup> Achmad Ali, *Menguak Tabir Hukum*, 2nd ed. (Jakarta: Prenada Media Group, 2015).

<sup>7</sup> Satjipto Raharjo, *Ilmu Hukum* (Bandung: Citra Aditya Bakti, 2014).

<sup>8</sup> et al Philipus M Hadjon, *Pengantar Hukum Administrasi Indonesia* (Yogyakarta: Gadjah Mada University Press, 2019).

additional laws that are given when certain disputes or violations have occurred. Repressive protection aims to resolve disputes. The principle of legal protection against government actions derives from the concept of recognition and protection of human rights.<sup>9</sup>

### **Theory of Evidence**

Evidence is appropriately classified as a process of proof of civil procedural law (*prosesrecht*) and should not be placed in Civil Code. However, there are times when procedural law can be divided into material procedural law and formal procedural law, the rules of evidence are included formal procedural law, which can also be included in the rules of material civil law. There are several evidentiary theories relating to evidence in formal civil law as follows:

1. Proving the logical or scientific sense
2. Proving the conventional sense
3. Proving the juridical sense
4. Evidence theory
5. Negative evidence theory
6. Positive evidence theory
7. The theory of evidence is merely corroborative
8. Subjective legal theory
9. Objective legal theory
10. The theory of procedural law.<sup>10</sup>

### **Theory of Justice**

According to Aristotle, justice is fairness in human actions. Fairness is defined as the midpoint between two external ends when it comes to two people or objects. Aristotle's theories of justice include:

1. Commutative Justice  
Justice that gives each person what is his share, where the priority is a certain object that has the right of a person.
2. Distributive Justice  
Justice that gives each person the subject of rights as individual.
3. Legal Justice  
Justice based on the law. The object of legal justice is social order, which is protected by law.
4. Vindictive Justice  
This is justice that gives each person a punishment or fine proportional

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<sup>9</sup> Ibid.

<sup>10</sup> Tim Redaksi BIP, 3 *Kitab Undang-Undang: KUHPer Kitab Undang-Undang Hukum Perdata, KUHP Kitab Undang-Undang Hukum Pidana, KUHP Kitab Undang-Undang Hukum Acara Pidana Beserta Penjelasannya*, ed. Saptono Rahardjo (Jakarta: Bhuna Ilmu Populer, 2017).

to the offense or crime committed.

5. Reactive Justice

Justice that gives each person his share of freedom to create according to his creativity.

6. Protective Justice

In society, people's security and private lives must be protected from arbitrary action.

## **Land Rights**

In general, the definition of land rights is a right that authorizes the use of land granted by the State on the basis of control over the earth water and space but not limited to the natural resources contained therein limited to the interests or direct relationship to the land. Land rights that have been controlled by someone give rise to such rights that the State should provide legal protection. The form of land rights is the existence of certificates as proof of rights, which are issued by the National Land Agency as the authority holding power from the State.<sup>11</sup>

The existence of a land certificate shows that someone has complied with the provisions of Land Registration which then provides certainty and legal protection to the holder. Thus, it is appropriate that the holder of a certificate whose issuance and acquisition are valid with applicable provisions should be given legal protection. Simply put, if someone claims to have land then that person should prove the existence of a certificate.<sup>12</sup> However, in the application of land rights evidence in Indonesian legal system, the position of certificate ownership is not absolute proof of ownership for land rights, it is only considered as evidentiary value. According to the Basic Agrarian Law, there are land rights that recognized after the abolition of western rights, as follows:

1. Property Rights
2. Cultivation Rights
3. Building Rights Title
4. Right to Use
5. Right to collect forest products

## **Property Rights**

According to the provisions of Article 20 Paragraph (1) of the UUPA, the definition of Property Rights is a hereditary, strongest and fullest right that can be owned by people in sense of individual citizens as a form of granting security over land. The provisions of Article 21 of the UUPA provide a limitation that

<sup>11</sup> Mukmin Zakie, "Konflik Agraria Yang Tak Pernah Reda," *Legality : Jurnal Ilmiah Hukum* 24, no. 1 (2016).

<sup>12</sup> Khairina Khairina, "Sertifikat Cacat Hukum Dalam Hukum Pertanahan Di Indonesia," *Juris* (2014).

those who can own and/or control property rights are only limited liability companies in the sense of Indonesian citizens.<sup>13</sup>

The acquisition and occurrence of property rights by law means that there are specific rules from legal norms that stipulate a person can have property right. For example, property rights arise from the conversion of western land rights. Conversion is the adjustment of land rights according to the law from old land provisions to new land provisions.

### **Theory of Property**

According to its understanding, property rights originally from Civil Code, especially Article 499, which interpreted in a broad sense is something that can be owned, controlled, burdened and transferred by individuals and legal entities. Meanwhile, in a narrow sense, every object that can be seen by five human senses. In studying property law, there are principles that must be considered, includes: A rule of coercive norms, Movable or transferable, The principle of individuality, The principle of totalité, The principle of inseparability, Prioritization principle, Mixing principle and The principle of publicity.

### **RESEARCH METHODOLOGY**

The research method used in this research is normative legal research. It means that, the research conducted by conducting an assessment of legislation that applies and is applied to particular legal problem.<sup>14</sup> It is including as legal research because, it is carried out by examining library or secondary materials only. Then the object of this research is research at the level of legal harmonization, to examine the extent to which existing written positive laws are synchronized or harmonious with each other.

The research approach serves to separate the analysis from the theoretical basis and principles used to answer the researcher's problems. This researcher uses two kind of approach, such as: Statute approach and Conceptual Approach. In statutory approach, researchers need to understand the hierarchy, and principles in legislation.<sup>15</sup> The statutory approach used as a benchmark approach will be more accurate if assisted by one or more suitable approaches, in order to enrich legal considerations that appropriate for dealing with the legal problems.<sup>16</sup> Conceptual approach is a type of approach that emphasizes the provision of certain point of view. In this case, the point of view will be applied in the discussion regarding the position of *Petok D* as proof of land ownership rights. Last, Case

<sup>13</sup> Abdurrahman Soedjono, *Prosedur Pendaftaran Tanah: Tentang Hak Milik, Hak Sewa Guna Dan Hak Guna Bangunan* (Jakarta: Rineka Cipta, 2008).

<sup>14</sup> Dr. Jonaedi Efendi, *Introduction to Law and Introduction to Indonesian Law* (Surabaya: Jakad Publishing, 2018).

<sup>15</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, Cet 13. (Jakarta: Kencana, 2017).

<sup>16</sup> Ibid.



Approach is a type of approach used to reveal and analyze problems by taking one example of a concrete case. In this case, the author raises a case of canceling a land certificate as happen in Surabaya District Court Decision Number 1264/Pdt.G/2019/PN.SBY. Moreover, this research uses primary legal materials such as laws and regulations regarding the position of *Petok D* as proof of ownership of land rights and secondary legal materials in form of all publications on law which are official documents. It includes textbooks, legal journals both in the form of print media and electronic media and/or the internet.

### **Legal Material Analysis Technique**

In legal research, legal material analysis techniques are the techniques to systematize legal materials. In terms of processing legal materials, it is carried out by selecting primary and secondary legal materials, then classifying according to the classification of legal materials, compiling the research data systematically, and carried out logically, which means that there is a relationship and relationship between one legal material and another legal material to get an overview and find the research results.<sup>17</sup>

Based on the research method raised on this research, the legal material analysis technique uses is the interpretation method. Moreover, it used systematic interpretation method, which interprets laws and regulations with the submitted case and answers the problem in terms of systematization and hierarchy of applicable regulations.

## **RESULT AND DISCUSSION**

### **The Characteristics of Land Rights Evidence Recognized By Certificate**

Initially, the problem arose related to a land ownership dispute. There were two parties who argued for the ownership rights. Thus, the Plaintiff, Muhammad Andri Kurniawan, filed a lawsuit to recognize his ownership rights against the Defendant Mohamad Anwar as in the mentioned case file of Surabaya District Court Decision No. 1264/Pdt.G/2019/PN.Sby.

In arguing his claim, the plaintiff stated that he is th right owner of a land located at Medokan Ayu, Surabaya. According to the Plaintiff, the acquisition of disputed land was obtained based on the existence of Sale and Purchase Agreement No. 31/2013 and Deed of Sale and Purchase No. 19/2016 made by Notary Yudi Gunawan which was purchased by the Plaintiff. Furthermore, based on this acquisition, a Certificate of ownership No. 7893 was issued under the name of Plaintiff. After the Plaintiff obtained proof of land ownership as mentioned above, suddenly there was a lawsuit filed by Defendant at State Administrative Court as case file No. 100/G/2017/PTUN/Sby requesting that the Certificate of

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<sup>17</sup> Mukti Fajar and Yulianto Achmad, *Dualisme Penelitian Hukum Normatif Dan Empiris*, 4th ed. (Yogyakarta: Pustaka Pelajar, 2017).



Title No. 7893, Measurement Letter on behalf of the Plaintiff be canceled, however in the ruling system of State Administrative Court stated that the lawsuit could not be accepted. The evidence submitted by the Defendant/Reconvention Plaintiff includes several documents as following below:

1. Preliminary Agreement of Sale and Purchase
2. Payment Receipt with sufficient stamp.
3. Certificate of Tax Object
4. List of Tax Object Information
5. Letter of Sale and Purchase Agreement
6. Notification of tax due
7. Land History Certificate
8. Letter of Statement of Physical Control of Land (Sporadic)
9. Letter C of Medokan Ayu Village No. 5481
10. Location Sketch in the name of Br. Moch Anwar Kav-17
11. Statement Letter of Mr. Abdul Rojag on behalf of PT Sumber Jaya Abadi
12. Affidavit on behalf of Soeratno Kav F-18
13. Affidavit in the name of Riyanto Lestiono
14. The statement made by the neighbors is a statement that it is true that the physical control of the land plot belongs to a certain person.
15. Affidavit of Subardi, Kav. F-7
16. Affidavit in the name of Siswatin, Kav F-8
17. Statement Letter of Former Lurah Medokan Ayu from 2012 – 2017
18. Excerpt of Letter C Register of Medokan Ayu Village No. C 4762
19. Appendix Land History letter C 5481 kav. F-17

### **Consideration of Judges in the Cancellation of Land Rights Certificates against Petok D**

In the subject matter, between Plaintiff and the Defendant each argued the ownership of a right to the same land. Based on the results of local examination conducted by the Panel of Judges, it is found that the disputed object land indicated that the Plaintiff has been declared as the rightful owner of the disputed land, the actions of Defendant Reconvention who has applied for land rights until the issuance of Certificate of Title No. 7893 in the name of Muhammad Andri Kurniawan without any understanding of Plaintiff Reconvention as the rightful owner can be qualified as illegal. It is because the Plaintiff is the right owner of the land.

### **The Evidence of Land Ownership**

The concept of land rights is a small part of National Agrarian Law. The important thing is that the position of Indonesian people who own land is on the weak side because almost all of the land does not have proof of ownership

certificates. Thus, formally, the land owned by the state.<sup>18</sup> Indonesian people who own a land are considered tenants or cultivators only by paying taxes on the land. In terms of land registration, it was carried out at the Land Registration Office where the land was subject to western law and a certificate of proof was given to the holder. On the other hand, if the land was subject to customary law, no land registration was carried out. That is why, the land did not have a certificate and the owner not able to provide a guarantee of legal protection.<sup>19</sup>

The purpose of land registration is not only to provide legal certainty and protection, but also as the implementation of land registration carried out continuously with the presence of Land Office. Land registration as proof of land ownership. Therefore, the legal instrument of land registration as one of the objectives of the National Agrarian Law can be realized through efforts as below:

1. Availability of written, complete and clear legal instruments
2. Implementation of land registration that allows land rights holders to easily prove their rights.

The concept of land registration, which is intended to provide legal certainty, is known as *recht cadaster*, which means that the guarantee of legal protection in land registration includes certainty on the status of registered rights, the subject of rights certainty, and the object of rights certainty. This registration produces a certificate as proof of right. The opposite of *recht cadaster* is *fiscal cadaster*, which means that land registration aims to determine who is obliged to pay taxes on land, while *fiscal cadaster* land registration produces proof of tax payment on land. The most important thing in the aspect of land registration is the prosperity of people and legal certainty as the guidance.

One of the objectives land registration set out in Article 3 of Government Regulation on Land Registration is to provide legal certainty and legal protection to holders regarding the rights of a land. In providing such certainty and protection, the relevant right holder need to have certificate as proof of ownership.

### **The Position of Land Certificates as Evidence of Ownership**

Certificate as a proof of land rights which is also the final process of land registration. Therefore, to distinguish the land registration process, it took place after Dutch colonial colonizers who did not provide legal certainty through the existence of the *domein verklaring* principle, after the enactment of National Agrarian Law and the Land Registration Government Regulation, which was last amended in 1997 to amend the 1961 Land Registration Government Regulation, Indonesian people should have better knowledge in terms of organizing land

<sup>18</sup> Urip Santoso, *Hukum Agraria: Kajian Komprehensif* (Jakarta: Kencana Prenada Media Group, 2012).

<sup>19</sup> Noer Fauzi Rachman, *Petani & Penguasa: Dinamika Perjalanan Politik Agraria Indonesia* (Yogyakarta: Pustaka Pelajar, 1999).

registration as an instrument to provide legal certainty.

It should be understood that the land registration system or publication system adopted in Indonesian national law is a negative publication system, which means that the publication system is used to protect the actual right holder. Thus, the right holder will always be able to claim back his rights even though they have been registered in the name of another person. In this negative publication system, State only accepts what is submitted by the intended parties who registers the land. It will potentially be filed a lawsuit by other parties who feel they have the same rights. This is a fundamental problem for the land law system in Indonesia, which causes many land disputes.<sup>20</sup> The criteria for a negative registration system includes several factor as following below:

1. Land registration system using deeds
2. Land certificates are not the only proof of land ownership despite their strong evidentiary properties.
3. The State as the registrar or having the right to control land does not guarantee that the physical data and juridical data on the land are correct.
4. Recognized expiration system
5. Any party aggrieved by land registration may file a claim to cancel the certificate.
6. Land registration officers are passive in sense that they only accept what is stated by the party requesting registration.<sup>21</sup>

Even in the absence of a certificate, the holder of land right can prove it with letters from the District or former customary land that has a certain history with the owner. Thus, in national land law system it is also accepted that the real right holder, as the holder of a land right, even if it does not have a certificate as proof of rights, is still given legal protection. If it is proven in a claim that the right holder had a historical relationship with the land before the certificate was issued, then based on the weaknesses in negative publication system, the certificate as evidence of rights can be canceled.

The evidentiary nature of land rights certificates as evidence of rights according to the provisions of Article 32 Presidential Decree concerning on Land Registration which contains that the existence of evidence that applies as a strong evidence regarding the physical data and juridical data contained therein, as long as the data is in accordance with the measurement certificate and the relevant land, in the case of a land for which the issuance of certificate is legally in the name of a person or entity and the method of acquisition is obtained in good faith.

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<sup>20</sup> Syendy A. Korompis, "Pengaturan Hukum Tentang Pendaftaran Tanah Menjadi Hak Milik Menurut Peraturan Pemerintah Nomor 24 Tahun 1997," *Lex Privatum* 6, no. 1 (2018).

<sup>21</sup> Ibid.

In the case of land for which the certificate has been issued legally in the name of an individual or entity and the manner of acquisition is in good faith, any other party who feels that he or she controls the object of the land cannot claim recognition right, if within 5 (five) years of the certificate issuance, he or she has not filed a written objection with the right holder and the Regional Land Office.<sup>22</sup>

### **Characteristics of Land of Ownership Evidence Recognized as Exceeding a Land Certificate**

The concept of control rights by the State, which is also embraced by National Land System, is limited to regulation, stewardship, and allocation of land rights to the wider community. Therefore, the role of State control is limited to control providing regulations to provide the greatest prosperity for people. Therefore, in the concept of UUPA, there is a prohibition on land that is not directly occupied by the owner because its essence is to prevent the abandon of land.

It has been stated in the concept of the enactment in National Agraria Law and the Land Registration Regulation, especially in Article 32 of the Land Registration Regulation, that the position of certificate as evidence is strong but not absolute. It means that, the evidence of rights in form of certificates by Land Office officials continue to issue certificates with the provision that, if in the future there is someone who claims to be the owner and able to prove before a judge, then the risk of the certificate as evidence of rights can be declared void by Court and revoked by Land Office.

Although the negative publication system is a little better than the system of *domein verklaring* principle, in practice the implementation of land registration within the aim of providing certificates as proof of rights does not provide legal certainty because there is still potential for it to be canceled if it exceed the due date. Thus, based on the facts of the trial associated with an analysis, the provisions of legislation in the field of land, the author provides points characteristic of ownership evidence of land rights that exceed certificates, as following below:

1. Acquisition of land object is based on legal and clear title.
2. Clear land history based on evidence
3. Proof of physical possession of the object
4. Proof of payment of land tax
5. The existence of witness testimony and / or local residents related to the control of the physical plane of the land object

### **The Truth of Judge's Decision through Ratio Decidendi**

The position of judges in the structure of judicial power has a very vital position. When a judge receives a case, they are required to examine and

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<sup>22</sup> Suparman, "Peranan Undang-Undang Pokok Agraria Bagi Masyarakat Indonesia Yang Bersifat Agraris," *Jurnal Warta* 54 (2017).

adjudicate it based on the law that fulfills a sense of justice to the concerned parties. The essence of justice is essentially has a function to provide protection of rights and directing obligations. Therefore, there is a balance between rights and obligations in society.<sup>23</sup> Every citizen is always guided by the independence of judge, which means that the judge is no longer the spokesman of the law but a legal regulation maker who gives shape to the contents of law and adapts it to legal needs.

During the discussion the issue of judges, it is inseparable from the moral and/or ethical influence of judges as an effort to adjudicate a case. A good judge is not only measured by his intellectual factor in legal science, but also moral and ethical attitudes. It is also very influential on the independence of judges when carrying out the mandate of law and make a decision of a case. The level of law quality is determined by the morals of each legal implementer itself, in the Roman Empire there was a saying "*quid leges sine moribus*" which means that Law is nothing if it is not accompanied by morality.<sup>24</sup> In examining and adjudicating a case, judge is bound by the certain principle in resolving a submitted case. In the practice of particular civil law procedure, there is a principle called *ius curia novit* which means that judges are considered to know the whole legal regulation. It can be explained that, judges in handling the cases are always considered to understand the law and never prohibited from rejecting cases on the pretext that law does not exist or there is a legal emptiness. However, it is the judge's obligation to seek and find the law. Although the judge is discoverer of the law, the position of the judge is not as an element of legislative power, this is because the judge's decision does not have general binding force, but is only binding on the related parties.<sup>25</sup>

### **Ratio Decidendi The judge overruled the Certificate**

The Plaintiff argues that the land in dispute which has been improved based on the Certificate issued on June 2, 2017, Measurement Letter dated 06/10/2015, No. 01704/Medokan Ayu/2015, 150 m<sup>2</sup> in the name of Muhammad Andri Kurniawan, ST was obtained by Mrs. Hartatik from A. Moh. Marzuki who was the attorney of Lilik Rusmiati in December 1996 then the Plaintiff purchased from Mrs. Hartatik as stated in Sale and Purchase Agreement No. 31 made by Notary Yudi Gunawan also Sale and Purchase Deed No. 19/2016 dated March 10, 2016 made by Yudi Gunawan a Notary/PPAT in Surabaya.

Whereas the Defendant's argument that the acquisition of disputed object is

<sup>23</sup> Trisna Muhammad Rofiqi et al., "Peranan Hati Nurani Hakim Dalam Persidangan," *Nusantara: Jurnal Pendidikan, Seni, Sains dan Sosial Humanioral* 1, no. 1 (2022): 1–25.

<sup>24</sup> "Keputusan Bersama Ketua Mahkamah Agung RI Dan Ketua Komisi Yudisial RI Nomor: 047/KMA/SKB/IV/2009 02/SKB/P.KY/IV/2009," in *Tentang Kode Etik Dan Pedoman Perilaku Hakim* (Jakarta, 2009).

<sup>25</sup> Boy Nurdin, *Kedudukan Dan Fungsi Hakim Dalam Penegakan Hukum Di Indonesia* (Bandung: Alumnus, 2012).

based on the Deed of Sale and Purchase Agreement No. 1593/L/II/2017 dated February 23, 2017 made by Notary/PPAT Nenden Mulyani, it is known that the Defendant has purchased from Matadji in form of a plot of former yasan land located on Jl. Medayu Utara Gg. 27 Kav. F-17 Surabaya covering an area of 160 m<sup>2</sup> No. 35 Class D-II Book C Cohir/C 5481. Based on the 2014 Land and Building Tax Notification Letter (*Surat Pemberitahuan Pajak Terutang Pajak Bumi dan Bangunan*) on the tax object Jl. Medayu Utara Gg. 27 Kav. F-17 Surabaya is written in the name of Mrs. Hartatik, while in the 2014, 2015, 2016 and 2017 Land and Building Tax Notification Letter on the tax object is written on the name of Matadji/Moch. Anwar (Defendant).

Based on the Preliminary Agreement of Sale and Purchase of Yasan Land, between Mrs. Lilik Rusmiati and Mr. Matadji dated February 26, 1985 made by Notary Soebiono Danoesastron connected to the Proof of Payment for the sale and purchase of Yasan land between Mrs. Lilik Rusmiati and Mr. Matadji proves that Mr. Matadji has purchased from Mrs. Lilik Rusmiati a land located at Medokan Ayu, Surabaya. Lilik Rusmiati with Mr. Matadji proves that Mr. Matadji has bought from Mrs. Lilik Rusmiati a land located in Medokan Ayu Kavling F-17 Petok 25/27 Surabaya within the total area of 160 m<sup>2</sup> until it is paid off and evidence of Tax Object Description List with information that land No. 4762 in Medokan Ayu Surabaya City has been sold by Mrs. Lilik Rusmiati to Mr. Matadji with a total area of 160 m<sup>2</sup>. Based on the history concerning on the acquisition of rights to the disputed object, the legitimate owner of disputed object land was previously written as Mr. Matadji who was obtained based on the sale and purchase with Mrs. Lilik Rusmiati while Mrs. Hartatik, the acquisition of rights is unclear. Thus, the Plaintiff cannot prove the evidence as correct.

Since the previous legal owner of the disputed land was Mr. Matadji, therefore the acquisition of Defendant's land from Mr. Matadji based on the Deed of Sale and Purchase Agreement Number: 1593/L/II/2017 made before Notary/PPAT Nenden Mulyani against the former yasan land located at Jl. Medayu Utara Gg. 27 Kav GF-17 Surabaya covering an area of 160 m<sup>2</sup> of No. 35 Class D-II Book C Number Cohir / C 5481 was appropriate as the procedure and carried out in good faith. The panel of judges was guided by the good faith purchaser as the purchase of land by Defendant to Mr. Matadji based on the Supreme Court Circular Letter Number 4/2016 concerning on the Implementation of Formulation Results from 2016 Plenary Meeting of Supreme Court Chamber as Guidelines for the Implementation of Duties for Courts, Civil Chamber number 4 related to the criteria for good faith purchasers that need to be protected based on Article 1338 paragraph (3) written on the Civil Code as mentioned below:

1. Sale and purchase of the land object with legal procedures and documents as specified in the regulations includes;
  - 1) Purchase of land through public auction
  - 2) Purchase of land before a Land Deed Official in accordance with



the provisions of Government Regulation No. 24/1997 concerning on Land Registration

- 3) Purchases are made at a fair price.
- 4) Purchase of customary / unregistered land carried out according to the provisions of customary law, such as;
  - a. Conducted in cash and light, in this case in front of or regional Village Head.
  - b. This was preceded by research into the status of the sale and purchase land and based on this research, it shows that the sale and purchase land belongs to the seller.
- 5) Conduct prudence by examining matters related to the object of the promised land, among others;
  - a. The seller is the person who is entitled / has the right to the land that is the object of sale and purchase, in accordance to the proof of ownership.
  - b. The land object being traded is not in a confiscated or blocked status
  - c. The land object being traded is not in the status of mortgage collateral
  - d. For land that is already owned, information has been obtained from National Land Agency and a history of legal relationship between the land and the certificate holder.

Based on the considerations as mentioned above, the legal owner of the disputed object as in the Excerpt of Letter C Register of Medokan Ayu Village No. 5481 covering an area of 160 m<sup>2</sup> Kav F-17 Medayu Utara 27 in the name of Moch Anwar which is based on the Deed of Sale and Purchase Agreement Number; 1593/L/II/2017 dated February 23, 2017 made before Notary/PPAT Nenden Mulyani, then the issuance of Certificate of Ownership (SHM) No. 7893 in the name of Muhammad Andri Kurniawan does not have binding legal force.

## CONCLUSION AND SUGGESTION

### Conclusion

The conclusion of this analysis is that, the ownership of *Petok D* consider as stronger than SHM by the consideration that, The characteristics of land ownership evidence can exceed the strength of Land Ownership Certificate are the acquisition of land objects based on legal / legal and clear title bases, clear land history based on evidence, evidence of physical control of the object / plot of land, there is evidence of payment of land tax and the existence of witness testimony and / or local residents related to the physical control of the object / plot of land.

The *Ratio Decidendi* of the judge in setting aside the Certificate of Title is



that the Defendant in this case also as a buyer can prove the existence of a clear history of the land purchase from the Plaintiff's argument where the Defendant bought from Mr. Matadji which according to the history of the disputed object land based on the acquisition of Ms. Lilik Rusmiati and the panel of judges was guided by the criteria for buyers in good faith in the Supreme Court Circular Letter Number 4 of 2016 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Court Chamber.

### Suggestion

The National Land Agency (BPN) should conduct research on physical and juridical data related to applications for recognition of land rights, before the issuance of certificates of rights must conduct an in-depth search of land history so that there are no land disputes, especially regarding proof of ownership.

The National Land Agency should conduct a thorough socialization of actions regarding the transfer of land rights, especially buying and selling. The public should be guided by Supreme Court Circular Letter No. 4/2016 on the Implementation of the Formulation of the Results of the 2016 Plenary Meeting of the Supreme Court Chamber as Guidelines for the Implementation of Duties for Courts, Civil Chamber number 4 related to the criteria for buyers in good faith.

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