



# Legal power of land tenure statement as proof of land ownership disputes from the perspective of Indonesian basic agrarian law

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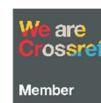
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# Legal power of land tenure statement as proof of land ownership disputes from the perspective of Indonesian basic agrarian law

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## ABSTRACT

Ownership of land rights is a very important thing to be considered by the Indonesian people. In Indonesia, proof of ownership of recognized land rights is only a certificate, as stipulated in the UUPA and Government Regulation Number 24 of 1997 concerning Land Registration. In the national land law, the Land Certificate has been regulated as a letter that contains physical evidence of the ownership of a plot of land used for the land registration process. The problems raised in this study are how the function of the Land Certificate and the power of proving the Land Certificate in land cases. The Land Certificate only functions as an accompanying document in land registration. However, in the latest provisions regulated in PP 18/2021, it is stated that the Land Certificate only serves as an indication in the context of land registration. The strength of the Land Certificate is not strong, because the UUPA and PP 24/1997 have stated that the evidence of legal ownership of land rights is the Land Rights Certificate. The Land Certificate is not a strong piece of evidence, because it is proof of ownership made under the hand.



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## Introduction

Can the Land Certificate really be legal proof of ownership of land rights? Many people still believe that the Land Certificate is proof of ownership of land rights, but Indonesian land law has regulated otherwise. In national land law, the Land Certificate serves as a complementary document in land registration for the first time.

Basic regulations related to natural resources in Indonesia are regulated in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (hereinafter referred to as "UUPA"). Natural resources regulated in the UUPA play an important role in supporting the development of the welfare of the Indonesian people (Muhajir et al., 2019). In accordance with the mandate of Article 33 paragraph (3), which states that the earth, water, and natural resources in it are controlled by the state and used

as much as possible for the prosperity of the people, the UUPA regulates regulations related to one of the elements of natural resources, namely land.

Land as a gift of God Almighty is one of the main sources for survival and life of the nation to achieve the greatest prosperity of the people (Harsono, 2007). Land is the primary source of Indonesian society. The land is usually used to meet daily needs and people need land in living their daily lives. Many people work on land but do not take care of land certificates because of the obstacles they face.

Ownership of land rights is a very important thing to be considered by the Indonesian people. In Indonesia, proof of ownership of recognized land rights is only a certificate, as stipulated in the UUPA and Government Regulation (PP) Number 24 of 1997 concerning Land Registration. However, there are still many people who think that the Land Certificate is a valid evidence recognized by the state.

In the national land law, the Land Certificate has been regulated as a letter containing physical evidence of the ownership of a plot of land used for the land registration process (Siagian, 2022). Land registration for the first time can be done in 2 (two) ways, namely systematic land registration and sporadic land registration. Systematic land registration is the first land registration activity for an area that has not yet been carried out land registration. Systematic land registration is organized by the government based on a long-term and annual work plan, which is carried out in areas that have been determined by the Minister of Agrarian and Spatial Planning/Head of the National Land Agency. Sporadic land registration is the first land registration activity carried out by each individual using the cost of the land owner (Sutedi, 2006).

As a result of the community's thinking that the Land Certificate is proof of legal ownership of land rights, a land dispute arises. Usually this land dispute arises because 2 (two) parties to a dispute over 1 (one) plot of the same land, where each party in the dispute has proof of ownership. Because of this, the land dispute between the two parties cannot be resolved, and must be continued to the court. As a result of these land disputes, it is not uncommon for land disputes to become court cases.

Based on this background, research was conducted on the Legal Strength of Land Certificates as Evidence of Ownership of Land Rights in Land Cases Reviewed from the National Land Law. The problems raised in this study are how the function of the Land Certificate and the power of proving the Land Certificate in land cases.

## Method

The research method in this study is doctrinal research. Doctrinal research focuses the researcher on a doctrine that is a mixture of rules, principles, norms, or guidelines for interpretation, and values. Doctrinal research produces the author's view of the norms being researched (Wibisana, 2023). In this study, a doctrinal method is used because it wants to provide the author's view on the legal norms studied related to the Land Certificate which in the community is seen as proof of ownership.

Data collection is carried out by means of literature studies conducted on legal materials spread across various sources of legal materials. The data used in this study is secondary data. The secondary data used in this scientific work are laws and regulations related to land, namely Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles and their derivatives, books related to land registration, journals related to land registration, and news related to land cases that occur in Indonesia.

Writing that is analyzed qualitatively, namely data analysis that emphasizes the content or quality of the data used and analyzed in depth and comprehensively. This analysis is used to find answers to the problem of land certificates that are used as proof of ownership of land rights in land cases.

Conclusions about land certificates used as proof of ownership of land rights in land cases use deductive logic, namely drawing general statements into special conclusions. In this study, what is general is the ownership of land rights. The study carried out on the general concept was carried out on the Land Certificate, which will be analyzed specifically from the Aspects of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, Government Regulation Number 10 of 1961 concerning Land Registration, Government Regulation Number 24 of 1997 concerning Land

Registration, Government Regulation Number 18 of 2021, Regulation of the Minister of Agriculture and Agrarian Affairs Number 2 of 1962 concerning Affirmation of Conversion and Registration of Former Indonesian Rights to Land, Circular Letter of the Head of the National Land Agency of the Republic of Indonesia Number: 9/SE/VI/2013 concerning Certificate of Former Land Owned by Customs, Circular Letter of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 1756/15.IV/2016 concerning Guidelines for the Implementation of Community Land Registration, Supreme Court Decision Number 526 K/Pdt/2013, Supreme Court Decision Number 2249K/Pdt/2019, and Supreme Court Decision Number 968 K/Pdt/2017.

## Results and Discussions

### Function of Land Certificate

In national land law, proof of ownership of recognized land rights is a certificate. This is in accordance with the provisions of Article 19 paragraph (2) of the UUPA jo. Article 32 of Government Regulation Number 14 of 1997 concerning Land Registration (hereinafter referred to as "PP 24/1997"). Land that has not been certified and will be applied for land registration, a Land Certificate will be attached to fulfill the application process Land Certificate is proof of ownership of a land that has not been certified, which is needed as one of the important documents in the application for land registration for the first time (Wibowo, 2015).

According to Arie Sukanti Hutagalung, the Land Certificate is a certificate made as an indication that there has been control in one plot of land. The certificate was given by the Village Head and known by the sub-district head to the party concerned, that there had been land control for many years because the party concerned needed juridical evidence (Lukman & Riskiyanti, 2019).

To understand the evidentiary power of the Land Certificate, it is necessary to first understand the history of the emergence of the Land Certificate. In the national land law, the Land Certificate was first implicitly regulated in Government Regulation Number 10 of 1961 concerning Land Registration (hereinafter referred to as "PP 10/1961").

The Land Certificate was first regulated in PP 10/1961. The Land Certificate is positioned as a complementary condition to explain the land juridical data on land registration that has not been fully held in the villages. The goal to be achieved in the PP is that Land Registration is carried out in villages and areas at the same level as the village (Government Regulation (PP) Number 10 of 1961 concerning Land Registration, 1961). In Article 18 of GR 10/1961, what is meant by a Land Certificate is a letter for uncertified land ownership domiciled in the Village where land registration has not been held in the area. At the time of land registration, a letter or proof of rights and a statement from the Village Head confirmed by the Wedana Assistant confirming the letter or proof of rights must be submitted to the Head of the Land Registration Office. In addition to Article 18 of GR 10/1961, the Land Certificate is also contained in Article 26 of GR 10/1961 which regulates the transfer of land rights due to inheritance, the proof is carried out with a Land Certificate issued by the Village Head and corroborated by the Assistant Wedana, which contains relevant evidence of ownership of rights.

The Land Certificate in PP 10/1961 is a declarative certificate issued by the Village Head (Santoso, 2022). The Land Certificate is one of the solutions for lands that have not been registered as land, in this case customary land with information related to the land and its boundaries (Santoso, 2022).

The Land Certificate is also contained in the Regulation of the Minister of Agriculture and Agrarian Affairs Number 2 of 1962 concerning the Affirmation of the Conversion and Registration of Former Indonesian Rights to Land (hereinafter referred to as "PMPA 2/1962"). Based on Article 3 of PMPA 2/1962, the Land Certificate is a certificate made by the Village Head which is strengthened by the Wedana Assistant which contains about justifying the proof of rights, explaining related to residential land or agricultural land, explaining who has the right to the land which is better accompanied by a derivative of the sale and purchase letter for the land (Government Regulation (PP) Number 22 of 1962 concerning Changes in Annual Mandatory Money on Business Use Rights and Concessions for Large Companies, 1962). As stipulated in PP 10/1961, PMPA 2/1962 also regulates the same thing, that the Land Certificate still functions as an accompanying document in land registration.

After PP 10/1961 was revoked, the PP was replaced by Government Regulation Number 24 of 1997 concerning Land Registration. Article 24 paragraph (2) of GR 24/1997 stipulates that the Land Certificate comes from the Village Head or Village Head which is used by the party concerned for the purpose of land registration. In addition to Article 24 of GR 24/1997, the Land Certificate is regulated in Article 39 paragraph (2) that the party who will transfer the rights carried out in front of the Land Deed Making Officer (PPAT) is obliged to provide a Land Certificate. If a Land Certificate is not given, then PPAT can refuse to make a deed of transfer of rights. The function of the Land Certificate in PP 24/1997 is as an accompanying document in registering land rights ([Santoso, 2022](#)).

In 2013, the Head of the National Land Agency of the Republic of Indonesia issued a Circular Letter of the Head of the National Land Agency of the Republic of Indonesia Number: 9/SE/VI/2013 concerning the Certificate of Former Land Owned by Customs. The Land Certificate was first clearly regulated in the national land law, which is specifically regulated for former land owned by customs. In this regulation, the Land Certificate is clearly regulated for the completeness of the application for registration of rights to former land owned by customs, made by the Village Head or Village Head. In this regulation, the Land Certificate does not function as proof of land ownership, but as a completeness to the application for registration of rights to former customary land ([Circular Letter of the Head of the National Land Agency on the Certificate of Former Land Owned by Customs, 2013](#)). In point 5 of the circular, the necessary forms and materials have been determined as a completeness of the application for registration of rights to former land owned by customs. The completeness of the application for registration of land rights must contain: (1) Subject of the rights holder; (2) Location, boundaries, and land area; (3) Regarding the possession, use, and utilization of land; (4) History of land ownership, transfer or acquisition; (5) Certainty is not an asset of the Government or other parties and is not included in forest areas; (6) Not being collateralized for a debt and not in a state of dispute with another party ([Circular Letter of the Head of the National Land Agency on the Certificate of Former Land Owned by Customs, 2013](#)).

In the Circular Letter of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 1756/15.I/IV/2016 concerning Guidelines for the Implementation of Community Land Registration (SE Minister of ATR/Ka BPN Number 1756/15.I/IV/2016) there is an attached form, where the position of the statement letter can replace the document proving the ownership and ownership of the land plot. This thought arose because of the view that many people who control land but do not have proof of ownership of rights so that there are obstacles in applying for registration of land rights. The Land Certificate is enforced as proof of legal ownership or ownership of land rights, so officials in the Land Office do not need to legally prove who owns the land parcel concerned. This is known as the principle of negative publication with a positive tendency that is known in the land registration system in Indonesia. The result of this publication principle is that the position of certificates in Indonesia can be used as a strong evidence, but not absolute evidence ([Safitri et al., 2020](#)).

Along with the SE of the Minister of ATR/Ka BPN Number 1756/15.I/IV/2016, the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 35 of 2016 concerning the Acceleration of the Implementation of Complete Systematic Land Registration (hereinafter referred to as "Permen ATR/Ka BPN 35/2016"). Article 12 paragraph (1) of the Ministerial Regulation of ATR/Ka BPN states that a Land Certificate is not required in land registration activities ([Regulation of the Minister of Agrarian and Spatial Planning/ Head of the National Land Agency of the Republic of Indonesia Number 35 of 2016 concerning the Acceleration of the Implementation of Complete Systematic Land Registration, 2016](#)). In these two rules, the land certificate is only made by the interested party witnessed by 2 (two) witnesses from the environment where the land is located, provided that the two witnesses do not have a family relationship with the interested party to the second degree either vertically or horizontally. The Land Certificate must be accountable based on true information and can be accounted for by the litigant. If it is later proven that the information is not in accordance with the reality, then the party concerned will be processed by law in accordance with the applicable legal provisions, and the certificate of land rights that has been issued by the local Land Office can be canceled. This is different from the Land Certificate that has been previously arranged, that the making of the Land Certificate is known by the Village Head or Village Head.



The latest regulation containing the Land Certificate is regulated in Government Regulation Number 18 of 2021 concerning Land Rights, Management Rights, Rights to Flats Units, and Land Registration. According to Article 97 of GR 18/2021, the Land Certificate issued by the Head of Village/Lurah/Sub-district Head is an instruction in the context of land registration, that the letter contains information on land control and ownership. PP 18/2021 clearly regulates that the position of the Land Certificate is as a guide. Meanwhile, PP 24/1997 regulates the position of the Land Certificate as an accompanying document.

Initially, the Land Certificate functions as a complementary document for land registration. After the enactment of the SE of the Minister of ATR/Ka BPN Number 1756/15.IV/2016 and Permen ATR/Ka BPN 35/2016, the Land Certificate does function as proof of ownership of land rights. However, the latest provisions related to Land Certificates have been regulated in PP 18/2021. The PP stipulates that the Land Certificate is not a proof of ownership of land rights, but a guide in the land registration process. Therefore, the function of the Land Certificate is an indication in the land registration process.

In the community, Land Certificates are made based on public awareness regarding legal certainty over the land they control in order to avoid interference from other parties. Based on this awareness, the community then submits the preparation of a Land Certificate to the Village Head or Village Head to make a Land Certificate (Atikah, 2022). Land Certificate as initial proof of ownership of land rights has long been carried out by people in rural areas (Alamari et al., 2019).

The reason why Land Certificates are made by many people in remote areas, is because the Land Certificate is only witnessed by the Chairman of the Neighborhood Unit and several witnesses, which will then be proposed by the Head of the Village Head or Village Head to be approved for the issuance of the Land Certificate (Atikah, 2022). Although in the national land law it has been regulated that the Land Certificate which contains measurement, mapping and bookkeeping, as well as the recording of land rights will be made into a strong proof tool, namely the Land Rights Certificate.

The reality that occurs in the community still thinks that the Land Certificate is proof of legal ownership of land rights, because they think that the land has been protected by law. This happens because in practice the government indirectly recognizes the land of the community who holds a Land Certificate when conducting an inventory for land acquisition for the public interest.

### Legal Strength of Proof of Land Certificate in Land Cases

Land cases can be tried in two different courts, namely the civil court which is under the general court and the State Administrative court (Ramadan, 2025). In this study, land cases that entered the civil court were carried out. To assess the evidentiary strength of the Land Certificate, this study is only assessed from several court cases that attach the Land Certificate as evidence of land tenure. This study uses 3 (three) cases taken from the Supreme Court Directory, where the cases occurred in Lampung, Southeast Sulawesi, and Maluku. This study only discusses the legal force of Land Certificates in land cases, by looking at the perspective of national land law.

Before discussing the case, it should be noted that land cases can enter into 2 (two) different judicial systems, namely the General Court, and the State Administrative Court. The General Court is a court that handles criminal and civil cases in general (Law (Law) Number 49 of 2009 concerning the Second Amendment to Law Number 2 of 1986 concerning the General Court, 2009). Meanwhile, the State Administrative Court is a court that handles cases related to written decisions issued by state administrative officials, which are considered detrimental to individuals and civil legal entities (Law No. 51 of 2009 concerning the Second Amendment to Law No. 5 of 1986 concerning the State Administrative Court, 2009). The State Administrative Court usually decides cases related to state administrative decisions that give birth to or abolish legal relationships, such as issuing Land Rights Certificates (Eddy Pranjoto W S, 2006).

The cases discussed in this study are civil cases, which are subject to the general justice system. In civil cases, there are 5 (five) types of evidentiary strength based on the evidence submitted in the trial, namely: (1) Perfect Power of Proof: a power that gives sufficient certainty to the judge, unless there is proof of resistance so that the judge will give the legal consequences; (2) Weak Probative Power: a force that does not provide sufficient certainty, so that the judge does not give legal consequences from weak evidence; (3) Partial Proof Force: a force that does not provide sufficient certainty, which this

power depends on the respondent's response; (4) Determining Proof Power: a power of proof that does not allow proof of resistance at all; (5) The Power of Proof of Resistance: the power of evidence that paralyzes proof with the aim of incapacitating its opponent (Heryani, 2012).

To measure the strength of proof in a civil case, there is evidence submitted by the parties in a case. Evidence is something that before being submitted to trial, it is already evidence. According to Article 1866 of the Civil Code, Article 164 of the Civil Code, and Article 284 of the Civil Code, evidence includes written evidence, witnesses, suspicions, complaints, and oaths.

According to Ferry Mursyidan Baldan, who at that time served as the Minister of Agrarian and Spatial Planning/National Land Agency, the Land Certificate actually confirms the history of the land (Hasanah, 2017). When associated with the types of evidence above, the Land Certificate is one of the written evidence. However, in written evidence, there are 2 (two) forms, namely deeds that are divided into authentic deeds and deeds under hand, as well as non-deeds. An authentic deed must meet what is required in Article 1868 of the Civil Code, namely the form of the deed that has been determined by law, made in the presence of an authorized public official, and the place where the deed is made. In this case, the Land Certificate is not included in the authentic deed, because the Land Certificate is not made based on the law, although the second condition is issued by the Village Head as a public official who has the authority and the third condition where the deed is made.

An authentic deed has 3 (three) powers of proof, namely: (1) Explicit Proof Power: the deed has the ability to prove itself as an authentic deed. In Article 1875 of the Civil Code, the power of external proof is not contained in the deed under hand. The deed under hand is only valid against whom the deed is used, if the party mentioned in the deed acknowledges the veracity of his signature (Pramono, 2015); (2) Formal Proof Strength: the deed is guaranteed to be true and certain of the date of the deed, the correctness of the signature in the deed, the identity of the person present, and the place where the deed was made (Pramono, 2015); (3) Strength of Material Proof: the deed provides certainty that the parties who appear and explain to the authorized public officials act in accordance with what is stated in the deed (Pramono, 2015).

If it is associated between the Land Certificate and 3 (three) authentic deed evidentiary powers, the external proof strength is not fulfilled. This is because in the trial, the holder of the Land Certificate will bring witnesses who support that they control the land. Meanwhile, the holder of the Certificate does not need to bring witnesses who corroborate, because the Certificate of Land Rights is a piece of evidence recognized in Article 19 paragraph (2) letter c of the UUPA. The Land Certificate has been regulated in the national land law as a document used in land registration. Therefore, the Land Certificate is a deed under hand, which cannot be used as proof of ownership of land rights in front of the court.

Although in reality the Land Certificate can be used as a basic right and proof of legal ownership, with the Supreme Court Decision Number 2595 K/Pdt/2018. In the decision, the panel of judges argued that the Statement of Physical Control of the Land Plot or can also be referred to as the Land Certificate is a valid and legally binding evidence. Referring to the Supreme Court Decision Number 2595 K/Pdt/2018, the Land Certificate only contains physical data and there is no juridical data in it. This is contrary to Article 32 paragraph (1) of Government Regulation No.24 of 1997 concerning Land Registration, that the Certificate is a strong proof sign, which is filled with the truth of physical data and juridical data.

Although there are cases that win the holder of the Land Certificate as proof of legal ownership, some of the cases below win the holder of the Certificate. Cases that occurred on the island of Sumatra, especially in Lampung, the cases that were studied to assess the evidentiary strength of the Land Certificate were cases that occurred in the Decision of the Menggala District Court Number 9/Pdt.G/2011/PN Mgl jo. Decision of the Tanjungkarang High Court Number 39/Pdt/2012/PT.TK jo. Decision of the Supreme Court Number 526 K/Pdt/2013. The lawsuit starts from 210 (two hundred and ten) Plaintiffs suing the Defendants for controlling the object of the case. The plaintiffs stated that they obtained the land from the distribution of customary rights land of the Kagungan Dalam customary law community, with proof of ownership given in the form of a Land Certificate issued by the Head of Kagungan Dalam Village.

According to the Plaintiffs, around 2008, Defendant I claimed the object of the case by considering it to be included in the area of the Right to Use. The land was planted with cassava, and the Plaintiffs were prohibited from caring for and taking crops in the form of oil palm and cassava. In addition, Defendant I also deployed security personnel to guard the object of the case. Defendant I was able to control the object of the case because he submitted an application to the Governor of Lampung for the attention of the Head of the Regional Office of the National Land Agency regarding the Application for a Location Permit located in the Village/Village of UPT SP II (Budi Aji Village) and UPT SP III (Marga Rahayu Village) with an area of 1000 ha (one thousand hectares). Then Defendant II issued a Location Map and Land Use Book number 19 dated November 19, 1994, where the granting of land rights was carried out by Defendant II, including land in Kagungan Dalam Village. The Plaintiffs stated that Defendant II made measurements or designations on land areas that were not requested by Defendant I and outside the area where the Regional Head had recommended, which Defendant II subsequently issued a Location Map and Certificate of Business Use Rights.

The Defendants stated that they had mastered the object of the case based on authentic evidence, as stated in the Certificate of Business Use Rights Number 19 of 1994. According to them, the Plaintiffs do not have the quality as the owner of the land in question, because the Plaintiffs do not yet own the land in question. In addition, the Defendants stated that the Plaintiffs did not clarify and emphasize, when the Land Certificate was made and issued to the Plaintiffs. However, according to the witness statements submitted by the Plaintiffs, the land object of the case has been started by the people of Kampung Kagungan Dalam since 1980.

In its deliberations, the Panel of Judges of the Menggala District Court stated that the plaintiffs were able to prove their ownership of the land, which is the land of the Kagungan Dalam customary law community. According to the Plaintiffs, they own the land based on the Land Certificate issued by the Head of Kagungan Dalam Village. According to the Panel of Judges of the Menggala District Court, there was an error in issuing the Certificate of Business Use Rights Number 19 dated November 19, 1994. In the ruling, the Plaintiffs are the legal owners of the land covering an area of 536 ha (five hundred and thirty-six hectares) ([Menggala District Court Decision Number 9/Pdt.G/2011/PN Mgl, Plaintiffs Against Defendants, 2011](#)). The Panel of Judges of the Tanjungkarang High Court also stated the same thing, so that Tanjungkarang High Court Decision Number 39/Pdt/2012/PT. TK, PT ALP Against the Appellant, 2012 strengthening the Decision of the Menggala District Court Number 9/Pdt.G/2011/PN Mgl.

The Panel of Judges of the Supreme Court has a different view from previous decisions. According to the Supreme Court Panel of Judges, the plaintiffs did not succeed in proving when each party began to control or work on the object of the case. They started working between January 5, 2002 – March 10, 2006. So that the Land Certificate issued by the local Village Head was issued after 1994. Defendant I succeeded in proving his rebuttal that they controlled the object of the case since 1994, as evidenced by the Certificate of Business Rights Number 19 of 1994. Therefore, the panel of judges considered that the Certificate of Right to Use was issued before the Land Certificate issued by the Head of Kagungan Dalam Village, and the plaintiffs could not prove the postulates of the lawsuit. Therefore, the Panel of Judges of the Supreme Court granted the cassation application from PT ALP and annulled the Decision of the Tanjungkarang High Court Number 39/Pdt/2012/PT.TK which affirmed the Decision of the Menggala District Court Number 9/Pdt.G/2011/PN Mgl ([Supreme Court Decision No. 526 K/Pdt/2013, 2013](#)).

On the island of Sulawesi, especially Southeast Sulawesi, the case that was studied to assess the evidentiary strength of the Land Certificate was the case that occurred in the Kendari District Court Decision Number 63/Pdt.G/2017/PN Kdi jo. Kendari High Court Decision Number 58/Pdt/2018/PT Kdi jo. Supreme Court Decision Number 2249K/Pdt/2019. This case began when the Plaintiff sued the object of dispute based on the Land Ownership Certificate issued in 1984 and the Deed of Submission Number 592.2/71/2012 made before the Mokoau Village Head.

Defendant I and Defendant II established the Service Office and the Office of the Service Technical Implementation Unit without providing compensation to the Plaintiff. According to them, the Plaintiff's land has been freed by the Southeast Sulawesi Provincial Government covering an area of 100ha (one hundred hectares) in 2002 for the purpose of building office facilities within the scope of the Southeast



Sulawesi Provincial Government. Compensation has been given to the landowners through committee 9 and the land has been certified with Right to Use Number 00008 of 2005/Mokoau.

The plaintiff stated that he obtained the object of the case from the deceased T. According to the witness, the Defendant, while serving as the Village Head of Mokoau, confirmed that he had made and signed a Certificate of Transfer of Control over a piece of land Number 592.2/71/2012 dated April 24, 2012 and a Letter of Transfer of Control over a piece of land Number 592.2/71/2012 dated April 30, 2012. In 2012-2017, the Plaintiff paid the Land and Building Tax thus strengthening the Plaintiff that there was control by the Plaintiff over the object of the case and showed that the object of the case was from the deceased T. However, based on the facts contained in the trial, the party receiving compensation was NL based on the Certificate of Property Rights Number 566/Kambu/1995.

According to the Panel of Judges of the Kendari District Court, the plaintiff has carried out the sale and purchase of land in accordance with Article 1457 of the Civil Code and the Enforcement of the Formulation of the Results of the Plenary Meeting Number 4 of 2016 concerning the Enforcement of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2016 as a Guideline for the Implementation of Duties for the Court. That the purchase has been carried out in cash and clearly based on the Letter of Transfer of Ownership of a Plot of Land Number 592.2/71/2012 dated April 24, 2012 issued by the Head of Mokoau Village and the Court Letter of Possession of a piece of land Number 592.2/71/2012 dated April 30, 2012 issued by the Head of Mokoau Village Head. The land was purchased from the rightful owner, namely Timba, based on the Land Cultivation Certificate No.03/KL/XII/KM/1984 at a reasonable price. Based on this, the plaintiff is a buyer in good faith ([Kendari District Court Decision Number 63/Pdt.G/2017/PN Kdi, SN Versus Southeast Sulawesi Provincial Office, 2017](#)).

The Panel of Judges of the Kendari District Court granted part of the plaintiff's lawsuit, that the plaintiff is the legal party to receive compensation based on the Certificate of Land Ownership and the Certificate of Transfer of Ownership. The Panel of Judges of the Kendari High Court also decided the same thing ([Kendari High Court Decision No. 58/Pdt/2018/PT Kdi, Southeast Sulawesi Provincial Office Against SN, 2018](#)).

The Supreme Court Panel stated that the Kendari High Court, which upheld the Kendari District Court's decision, had misapplied the law. The plaintiff owns the disputed land from the cultivator, but the cultivator is not the owner of the land because the land remains state land. According to the Supreme Court Panel of Judges, the National Land Agency has allocated an object for the Southeast Sulawesi Provincial government with a Right to Use Certificate Number 00008 of 2005 In fact, the Right to Use Certificate Number 00008 of 2005 was issued before the transition from cultivator to plaintiff which occurred in 2012. Therefore, the panel of judges of the Supreme Court stated that the plaintiff's lawsuit was rejected, and annulled the Kendari High Court Decision Number 58/Pdt/2018/PT Kdi which upheld the Kendari District Court Decision Number 63/Pdt.G/2017/PN Kdi ([Supreme Court Decision Number 2249 K/Pdt/2019, 2019](#)).

Cases that occurred on the island of Maluku, especially in Central Maluku, the cases that were studied to assess the evidentiary strength of the Land Certificate were cases that occurred in the Ambon District Court Decision Number 95/Pdt.G/2015/PN. Amb jo. Ambon High Court Decision Number 31/Pdt/2016/PT Amb jo. Supreme Court Decision Number 968 K/Pdt/2017. The lawsuit began with the Plaintiffs suing the Defendants who controlled the Plaintiffs' land against the law. The Plaintiffs own the land of Dati in Dati Hatutona which is located in the State of Suli, Salahutu District, Central Maluku Regency, Maluku Province. The Plaintiffs are the heirs of CS as the owner of the Dati land whose names are listed in the Register of Numbers of Dussong-Dussong Dati and Dussong-Dussong Heritage in the State of Suli on May 5, 1814.

On the land, Dati Hutatona has been given the right to cultivate 13 people in the Suli Country to plant both long-lived and short-lived plants. In 1995, the cultivators had made a statement stating that the cultivators had no objection if the plaintiffs would take back the Dati Hutatona land or sell the land. According to the Plaintiffs, Defendant I was sued for seizing part of the land located in Dati Hutatona without the knowledge of the plaintiffs as the legal owner of the land and had sold part of the land of Dati Hutatona to Defendant III. Defendant II was sued because he owned part of the land located in Dati Hutatona in an unclear and illegal manner and then sold it to Defendant III. Defendant III was sued

for owning land located in the land of Dati Hutatona due to the sale and purchase with Defendant I and Defendant II. Meanwhile, Defendant IV was sued because he obtained the right from Defendant II in terms of cooperation to build a building on the Plaintiffs' Dati land without the knowledge of the Plaintiffs as the rightful owner.

According to the Plaintiffs, Defendant I seized the land based on the Land Certificate No. 05/DS/I/1995 dated January 23, 1995 by the Head of Suli Village and the Land Ownership Certificate No. 1166/NS/XI/2007 dated November 26, 2007 by the King of Suli State, and transferred the right to a piece of land in Dati Hutatona to Defendant III. As a result of the Land Certificate, Defendant III already has SHM Number 2306 dated December 6, 2007 with a Survey Letter dated December 6, 2007, Number 218/2007/SIS covering an area of 4,416 m<sup>2</sup> (four thousand four hundred and sixteen square meters). According to the Plaintiffs, the land was sold by Defendant I, while he was an unauthorized party. Defendant II has a Land Ownership Certificate Number 1481/NS/XI/2011 dated November 11, 2011 with an amount of 1,944.75m<sup>2</sup> by the Raja Negeri Suli, then Defendant II sold part of the Dati Hutatona land to Defendant III. Defendant IV controlled the land because he cooperated in the form of a Ready to Build Plot Development Cooperation Agreement based on the Notary Deed dated July 3, 2014 Number 5 before Notary XYZ. In addition to the Defendants above, Defendant V as a government agency was sued for issuing SHM Number 2306 dated December 6, 2007 and SHM Number 2307 dated December 6, 2007.

According to Defendant I, he bought the land from NS, and NS bought it from AL. AL got the land from US who is the owner of the original land plot. While Defendant II got the land from YR, YR got the land from MS, and MS is the son of US which is the original land plot. The possession by Defendant III occurred due to the issuance of SKT No. 05/DS/I/1995 by the Raja Negeri Suli, and then issued again on November 26, 2007 with a Certificate of Land Ownership No. 1166/NS/XI/2007 dated November 26, 2007, which then submitted an application for the creation of SHM to Defendant V. After that, SHM 2306/Suli Village was issued on December 6, 2007 covering an area of 2,904 m<sup>2</sup> and SHM 2307/Suli Village on December 6, 2007 covering an area of 4,416 m<sup>2</sup>. Defendant IV built on the land of SHM 2306/Suli Village dated December 6, 2007 covering an area of 2,904 m<sup>2</sup> because he had entered into a Ready-to-Build Plot Development Cooperation Agreement based on the Notary Deed dated July 3, 2014 Number 5 and the Power of Attorney to Sell based on the Notary Deed dated July 3, 2014 Number 5 before Notary XYZ.

Defendant V stated that Defendant III was a buyer in good faith, and all transfers of rights were legitimate transfers of rights because they had fulfilled the material requirements and formal requirements in buying and selling, based on Supreme Court Jurisprudence Number 251 K/Sip/1958 dated December 26, 1958. The issuance of the Certificate has been in accordance with Article 12 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration because it has been carried out without any objection from any party, which is strengthened by the existence of SKPT Number 1166/NS/XI/2007 issued by the Raja Negeri Suli which states that there is no dispute on the land, and according to Defendant III.

The Panel of Judges of the Supreme Court assessed this case under Article 283 RBg and Article 1863 of the Civil Code: whoever says he has a right or he mentions an event, to affirm that right or to deny the rights of others, then that person must prove the existence of that right or event. In this case, the Plaintiff submitted 11 pieces of evidence, with 6 witnesses and Defendant I submitted 5 letters of evidence, Defendant II did not submit, Defendant III submitted 32 letters of evidence, Defendant IV submitted 6 letters of evidence, and Defendant V submitted 7 letters of evidence and the Defendants submitted 5 witnesses.

On November 27, 2015, the panel of judges carried out a local examination and found that the object of the dispute was in the form of 3 plots of land. Defendant III controls the Object of Dispute I as in the Certificate of Property Rights Number 2306/Suli, the Object of Dispute II as in the Certificate of Property Rights Number 2307/Suli. In addition, Defendant IV has built 11 housing units in the object of dispute I.

The panel of judges found the fact that CS, as Plaintiff I is the Head of Dati from several Dati Hamlets, one of which is Dati Hatutona Hamlet. Plaintiff II and Plaintiff III are descendants of CS, so the plaintiffs are also entitled to several Dati Hamlets, one of which is Hati Hatutona Hamlet based on the Number

Register of Dussong-Dussong Datty and Dussong-Dussong Heritage in Suli on May 5, 1814. The object of the dispute is not part of Dati Hatutona Hamlet because the plaintiffs cannot prove the postulates of the lawsuit.

At the time of the trial, Defendant II and Defendant V attached a copy of the Ambon District Court Decision No. 13/Pdt.G/2015/PN. Amb dated August 13, 2015, so the panel of judges did not judge based on witness statements and on the attached evidence to prove the ownership rights of the object of dispute. Therefore, the Certificate of Property Rights No. 1165/DS/XII/1995 dated December 18, 1995 is invalid and does not have binding force ([Ambon District Court Decision Number 95/Pdt.G/2015/PN. Amb, The Plaintiffs Against the Defendants, 2015](#)). The panel of judges of the Ambon High Court also assessed the same as the panel of judges of the Ambon District Court (Ambon High Court Decision Number 31/Pdt/2016/PT Amb, 2016).

The Supreme Court Panel of Judges has a different view. They considered the Ambon District Court's decision to be wrong because the Defendants were not heirs from the US as the owner of Dati Waimena. The Defendants never obtained any rights in any form from US as the owner of Dati Waimena. Based on the facts, both the evidence of letters and witness statements from the plaintiffs who stated that Dati Waimena belonging to the US was not located in the object of dispute, but far from the object of the dispute ([Supreme Court Decision Number 968 K/Pdt/2017, 2017](#)).

The High Court's decision upholding the District Court must be canceled because it is wrong or does not apply the law in the case decision. The grounds of cassation cannot be justified, since this decision is not contrary to law or law, then the application filed by the Cassation Petitioners must be rejected, and the Cassation Petitioners are the losing parties.

In the life of people in Indonesia, there are still many land ownership as evidenced by Land Certificates. Cases that arise between the holder of the Land Certificate and the holder of the Certificate that has been issued by the local Land Office. This happened in several regions in Indonesia, namely Lampung, Southeast Sulawesi, and Central Maluku. The similarity of the three cases is the struggle for who has the right to the land, which is evidenced by the Land Certificate and Certificate.

The panel of judges of each court has applied the law appropriately, because the certificate is the only proof of ownership of land rights recognized in the national land law, in accordance with Article 32 paragraph (2) of GR 24/1997, that the certificate is a strong piece of evidence. Therefore, the Land Certificate is not a strong evidence in proving the ownership of land rights. This can be seen from the three cases that occurred in Lampung, Southeast Sulawesi, and Maluku where the judge assessed based on Article 19 paragraph (2) of the UUPA jo. Article 32 of GR 24/1997, that the evidence of strong ownership of land rights is a certificate of land rights so that the winner of the case is the party holding the Certificate of Land Rights.

## Conclusions

The Land Certificate only functions as an accompanying document in land registration. However, in the latest provisions regulated in PP 18/2021, it is stated that the Land Certificate only serves as an indication in the context of land registration. The strength of the Land Certificate is not strong, because the UUPA and PP 24/1997 have stated that the evidence of legal ownership of land rights is the Land Rights Certificate. This can be seen from 3 (three) cases that occurred in Lampung, Southeast Sulawesi and Maluku. All parties who include a Land Certificate as proof of ownership of land rights are the losing parties. Thus, the Land Certificate is not a strong evidence, because it is proof of ownership made under the hand.

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