

## LEGAL REVIEW OF LAND RIGHTS RELATED TO THE COMPLETE SYSTEMATIC LAND REGISTRATION (PTSL) PROGRAM BASED ON LEGAL CERTAINTY VALUES

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**Abstract :** The Ministry of ATR/BPN is authorized by the government to grant land rights and land registration activities. Therefore, the PTSL Program was created as a land registration program to achieve legal certainty. The results of the PTSL Program can be issued certificates which are proof of ownership that has legal certainty, but in fact even though they already have legal certainty they can still cause land disputes such as certificates that overlap ownership. Seeing the problems above, the author is interested in analyzing how the PTSL program is implemented for the purpose of legal certainty and efforts to resolve legal disputes in the PTSL program regarding overlapping land rights based on Permen ATR/BPN Number 21 of 2020. The research method used is normative juridical. The results of the study show that the PTSL program with overlapping certificates of ownership has not fully obtained legal certainty due to administrative defects. Therefore, to obtain legal certainty, one of the certificates must be canceled and the process carried out according to the procedure. Efforts to resolve legal disputes in the PTSL Program regarding overlapping land rights in accordance with Article 6 Paragraph (1), Article 29 Paragraph (1), Article 34, and Article 35 of Permen ATR/BPN Number 21 of 2020. It was concluded that the PTSL Program even though can cause overlapping certificates of ownership, you can still get legal certainty with the handling regulated by Permen ATR/BPN Number 21 of 2020.

**Keyword:** Land Rights, PTSL, Legal Certainty

## I. INTRODUCTION

Ownership of land adheres to the principle of social function. This means that landowners may not arbitrarily use their rights without regard to the interests of others.<sup>1</sup> Therefore, to provide benefits to landowners, communities and the state in achieving peace and tranquility, the use of land must be based on rights and conditions.

Permen ATR/BPN Number 18 of 2017 concerning Delegation of Authority for Granting Land Rights and Land Registration Activities, explains that the government gives authority to the Ministry of ATR/BPN to exercise state power according to the procedures stipulated in the applicable regulations regarding legal relations, particularly in the field of law granting or assigning rights.

The Ministry of ATR/BPN has developed a land registration acceleration scheme as a form of providing legal certainty, such as establishing the PTSL Program regulated in the ATR/BPN Regulation Number 6 of 2018 and Presidential Instruction Number 2 of 2018 concerning PTSL. This program has been implemented since 2018 with a target of completion in 2024 which has the aim of registering land in areas that have not been registered in a village or sub-district by being carried out simultaneously. In addition, this program can also reduce land conflicts because land parcels that have been registered can be repaired and increased again and conflicts resolved.

Land registration has the main objective of providing legal certainty and issuing certificates to right holders. However, in fact land registration through the PTSL Program can still lead to land disputes. One example is the presence of other parties who object to the issuance of SHM Numbers 937, 938, and 1269/Kebonturi Village on behalf of Munari, Wartini, and Sutaryono Fauzi, S.Pd. through the PTSL Program because it turned out that the land that was issued was part of SHM Number 105/Desa Kebonturi which was formerly SHM Number 54/Desa Geyongan in the name of Abdul Razak Husband Patimah.<sup>2</sup> In land law, this is known as a certificate of overlapping ownership.

## II. RESEARCH METHODS

The research method is a scientific approach to obtain legal material through predetermined objectives and uses. In this study the method used is normative juridical in which this approach focuses on the existing legal rules in laws, regulations, and decisions issued by courts, as well as existing legal rules in society associated with the hierarchy of a regulation. The normative juridical approach is carried out to analyze a problem or legal issue that is now frequently occurring in society, in this research regarding the implementation of the PTSL Program and the Handling and Settlement of Land Cases, which are then examined in accordance with applicable legal regulations and related to these legal problems or issues. The normative juridical approach in this study uses several legal rules such as: Law Number 5 of 1960 concerning Basic Agrarian Principles, PP Number 24 of 1997 in conjunction with PP Number 6 of 1961 concerning Land Registration, Minister of ATR/BPN Number 6 of 2018 concerning Complete Systematic Land Registration (PTSL), and Minister of ATR/BPN Number 21 of 2020 concerning Handling and Settlement of Land Cases.

## III. RESULT AND DISCUSSION

One of the first land registration programs created by the government was the PTSL Program. This program is carried out simultaneously with the target of land objects that have

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<sup>1</sup>Dessy Normawati, Irma Maulida, "Legal Protection for Closed Landowners in Obtaining Road Access Judging from Law Number 5 of 1960 Concerning Basic Agrarian Regulations", *Responsive Journal of Law*, Vol.10 No.2 (August, 2019), page 71.

<sup>2</sup>Data was obtained from the Dispute Control & Handling Section at the Cirebon District Land Office during the Field Experience Program (PPL) on 29 August 2022-07 October 2022.

not been registered in a village or sub-district area which includes submitting information on juridical and physical data regarding one or more land objects as a registration requirement. The legal basis for the PTSL program currently in use is Presidential Instruction Number 2 of 2018 and ATR/BPN Regulation Number 6 of 2018 concerning PTSL. This program has the aim of maintaining the community's rights to the land they live in by providing legal certainty through the PTSL Program which applies the principles of simple, fast, smooth, safe, fair, equitable, open and accountable.

Documents submitted to fulfill land registration requirements through the PTSL Program are as follows.<sup>3</sup>

1. Registration form
2. Photocopy of the Applicant's KTP and KK
3. Copy of SPPT and STTS
4. Deed of sale & purchase
5. Letter of Physical Declaration of Land Sector attached with Photocopy of KTP and KK of Witness
6. Sketches/Drawings of Land Planes
7. Tax Debt Statement Letter (if tax is payable)
8. Statement of Strengths and Weaknesses of Land Area
9. Letter of Statement and Approval from Neighbor accompanied by Photocopy of KTP
10. Declaration of Non-Disputed Land
11. Sale and purchase statement (if there was a sale and purchase before hand)
12. If the file is complete, the applicant will be given a Document Receipt
13. Announcement of Physical and Juridical Data (if there are differences)
14. Disclaimer Form (if there are objections/disclaimers)

The stages of implementing the PTSL Program are regulated in Permen ATR/BPN Number 6 Article 4 Paragraph (4), which states:

The stages of implementing the PTSL Program consist of:

1. Planning stages
2. Location determination stage
3. Preparatory stage
4. Stages of formation and determination of the PTSL adjudication committee and task force
5. Counseling stages
6. Stages of physical data collection and juridical data
7. Stages of research for proving rights
8. Stages of announcement and approval
9. The stages of confirmation of conversion, recognition of rights, and granting of rights
10. Stages of bookkeeping and issuance of certificates of land rights
11. Stages of documentation and submission of results
12. Reporting stages

Land registration through the PTSL Program that has been held is a legal certainty provider with the hope that it will not cause problems in the future for the owner by providing a certificate as evidence that has legal force. However, over time, even though they have obtained legal certainty with the issuance of certificates, they can still cause problems in the form of land disputes. This is because land registration in Indonesia adheres to a negative system with a positive tendency, where what is stated on the land book or certificate is

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<sup>3</sup>Data were obtained from the results of an interview with PTSL Team Members at the Cirebon District Land Office on 07 February 2023.

considered as strong evidence until the contrary can be proven.<sup>4</sup> According to this system, it means that the emergence of land problems in land parcels that have been registered may occur both in relation to other parties and concerning themselves listed in the certificate.

Recently, certificates with overlapping ownership often occur. At present it is not uncommon for more than one certificate to be issued in the same field, resulting in legal uncertainty for the right-holders and triggering conflicts between right-holders because they feel that they each own the land.

The problem of overlapping ownership certificates occurred at the Cirebon District Land Office, as evidenced by the issuance of SHM Numbers 937, 938, and 1269/Kebonturi Village on behalf of Munari, Wartini, and Sutaryono Fauzi, S.Pd. through the PTSL Program above SHM Number 105/Desa Kebonturi which was formerly SHM 54/Desa Geyongan on behalf of Abdul Razak Husband Patimah.<sup>5</sup>

Based on the information from the applicant party, the respondent party, and the village party who knows the history of the land regarding the object in dispute, there are several points that are the subject matter of the object in dispute. The following is the information presented by the parties to the dispute and the village.

1. Statement of the Petitioner<sup>6</sup>

- a. When the respondent controlled and utilized the object of the dispute, he did not object. However, after the issuance of 3 certificates through the PTSL Program, they objected.
- b. The applicant party stated that the land parcels which were the object of the dispute were already certified.
- c. Administratively, the disputed plot of land still legally belongs to Abdul Razak's heirs because spliting has not been carried out.

2. Statement of the Respondent<sup>7</sup>

- a. The respondent did not understand land issues, they only bought the land from Abdul Razak and only made the village seal which became the basis for the AJB in 2002 and 2003.
- b. During his lifetime, Abdul Razak never wanted to settle the certificate issue.
- c. The respondent participated in the PTSL Program in order to obtain a certificate based on AJB made in 2002 and 2003.
- d. The respondent has controlled and utilized the land since 1991.

3. Village Information<sup>8</sup>

- a. The Village Party stated that the respondent was indeed a participant in the 2018 PTSL Program.
- b. The data submitted in the PTSL Program is AJB.
- c. The AJB is registered as customary land and the village does not know that the objects registered through the PTSL Program are certified.

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<sup>4</sup>Septina Maryanti Prihatin, et al, Research on Increasing Certainty and Legal Protection of Land and Spatial Rights (Bogor: Center for Research and Development ATR/BPN Press, 2020), p. 19.

<sup>5</sup>The data was obtained from the results of an interview with Mr. Miftah Kusni, SH, as the Head of the Dispute Control & Handling Section at the Cirebon District Land Office on 07 February 2023.

<sup>6</sup>The data was obtained from the results of mediation held at the Cirebon District Land Office in the presence of Durakhman and Patimah as Abdul Razak's heirs and accompanied by attorneys as the applicant party on August 23, 2022.

<sup>7</sup>Data were obtained from the results of interviews during the mediation held at the Cirebon District Land Office in the presence of Munari, Wartini, Sutaryono, S.Pd. and was accompanied by a Legal Counsel as the respondent on August 23, 2022.

<sup>8</sup>Data were obtained from the results of interviews during the mediation which was held at the Cirebon District Land Office and was attended directly by the Kebonturi Village Party as a party who was also present on August 23, 2022.

#### 4. Response from the Cirebon District Land Office<sup>9</sup>

- a. AJB were made in 2002 and 2003 without the approval of Abdul Razak's wife.
- b. SHM No. plotting results. 937, 938 and 1269/Desa Kebonturi part of SHM No. 105/Kebonturi Village
- c. Both parties know each other that the objects in dispute overlap, but both parties control the object.
- d. SHM No. 937, 938, and 1269/Desa Kebonturi are PTSL Products that were in wrong procedure and had to be canceled due to overlapping ownership (administrative defects)

Certificates that overlap ownership with the issuance of SHM Numbers 937, 938, and 1269/Kebonturi Village on behalf of Munari, Wartini, and Sutaryono Fauzi, S.Pd. through the PTSL Program above SHM Number 105/Kebonturi Village which was formerly SHM Number 54/Geyongan Village on behalf of Abdul Razak Husband Patimah due to several constraints, such as:<sup>10</sup>

1. It turns out that the object of the land parcel still has land problems such as there is no clear and clean, but the participants intend to continue to issue their land certificates in various ways. This is because during his lifetime Abdul Razak never wanted to clean up the making of certificates and only made village seals as the basis for making AJB in 2002 and 2003. In addition, when Abdul Razak died his heirs objected to spliting because they did not feel that buying and selling was evidenced by AJB which was made by Abdul Razak without the approval of his wife and has the status of customary land.
2. Registered land parcels have not been mapped digitally, correctly and validly, or in other words, land parcels have not been plotted. This is because SHM Number 105/Desa Kebonturi, formerly SHM Number 54/Desa Geyongan in the name of Abdul Razak, Husband Patimah, is a land certificate issued in old times or old school.

Based on the constraints on land issues regarding overlapping certificates of ownership above, the PTSL Program is considered a pragmatic solution. Pragmatic solutions are practical solutions for short periods of time and don't think about the future consequences. This is because with the PTSL Program, the respondents submitted land registration so that certificates could be issued more easily. The Land Office dares to issue a certificate in this field because:<sup>11</sup>

1. Documentation requirements submitted are considered complete.
2. At the time of data collection, there was no information that the land parcels had been certified.
3. Old certificates have not been plotted in the Land Office Computerized System (KKP).

In essence, the certificate is a form of legal certainty which is a strong evidence of land parcels. However, the existence of land issues around overlapping ownership certificates has not fully provided perfect legal certainty for the rights holders. This is because when there are overlapping certificates, the certificate is unclear about the subject of the rights, the object of the rights, or the status of the rights.

Guarantee of legal certainty provided by the Land Office regarding overlapping ownership certificate issues, namely in accordance with Permen ATR/BPN Number 21 of

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<sup>9</sup>The data were obtained from the results of an interview with Mr. Miftah Kusni, SH, as the Head of the Dispute Control & Handling Section at the Cirebon District Land Office on 07 February 2023.

<sup>10</sup>Ibid.

<sup>11</sup>Ibid.

2020 concerning Handling and Settlement of Land Cases as in Article 35 states that overlapping ownership is one result of administrative or juridical defects. Therefore, in order to obtain legal certainty for certificates with overlapping ownership in one sector, either in whole or in part, legal products must be canceled based on the results of the handling carried out by the Land Office and in accordance with the principle that more than one certificate may not be issued in one area.

Dispute resolution through mediation at the Land Office is an embodiment of the efforts made to resolve issues of overlapping certificates of ownership through the PTSL Program.

Based on research, in the context of handling and solving cases, the issuance of SHM Numbers 937, 938, and 1269/Desa Kebonturi on behalf of Munari, Wartini, and Sutaryono Fauzi, S.Pd. through the PTSL Program above SHM Number 105/Desa Kebonturi which was formerly SHM Number 54/Desa Geyongan on behalf of Abdul Razak Husband Patimah, the Cirebon District Land Office received a complaint from Sihabudin, et al. as attorney for Patimah and Durakhman, the owner of SHM Number 105/Kebonturi Village, which was formerly SHM 54/Geyongan Village. Complaints are received through the complaint letter reception counter directly. The complaint is accompanied by several requirements, such as:

1. Identity card
2. Mediation request letter
3. A brief description of the chronology of the problem
4. The principal must come either alone or with legal counsel
5. Photocopy of object of dispute

After being examined by the recipient of the complaint and stating that the requirements are complete, the complaint that has been received will be submitted to the Dispute Control and Handling Section in accordance with its duties and functions which will then be recorded in the complaint register book and inputted into the mailing information system and the applicant will be given a receipt.

Complaints whose requirements are complete are included in the application resume as a result of an officer's review to determine whether a land case is or not. After being reviewed by the officer it turned out to be a complaint from Sihabudin, et al. as attorney Patimah and Durakhman are cases. In this case, the case has a main problem, namely the owner of the land SHM Number 105/Kebonturi Village, formerly SHM Number 54/Geyongan Village, objected to the issuance of SHM Numbers 937, 938, and 1269/Kebonturi Village through the PTSL Program because the object is part of SHM Number 105/Kebonturi Village.

Follow up on the matter because it is included in the land case. Handling carried out is in accordance with Article 6 paragraph (1) Permen ATR/BPN Number 21 of 2020 concerning Handling and Settlement of Land Cases, which states:

The handling of disputes and conflicts is carried out through the following stages:

1. Case review
2. Initial degree
3. Study
4. Research result
5. Expose research results
6. Coordination meetings
7. Final degree
8. Case settlement

In the context of handling and resolving certificate cases that overlap the ownership of Kebonturi Village, the Cirebon District Land Office reviews juridical data and physical conditions in the field which can be concluded as follows.

1. The land that is the object of the dispute is SHM No. 937, 938, 1269/Kebonturi Village controlled by Munari, Wartini, and Sutaryono Fauzi, S.Pd as a residence is

part of SHM No. 105/Kebonturi village occupied by Patimah and Durakhman as a residence.

2. SHM No. 937, 938, 1269/ Desa Kebonturi was issued through the PTSL Program on the basis of AJB which has the status of customary land and has been controlled since 1991. In addition, when there was data collection for the implementation of the PTSL Program there was no information that the land had been certified.
3. The KKP Geo results show that there is overlap between SHM No. 937, 938, 1269/Desa Kebonturi and some SHM No. 105/Kebonturi Village.

Based on a review of juridical data and physical conditions in the field according to Ministerial Regulation ATR/BPN Number 21 of 2020, the Cirebon District Land Office can process a decision to cancel the certificate for the Cancellation of SHM Numbers 937, 938 and 1269/Desa Kebonturi. This is because based on Article 35 of Permen ATR/BPN Number 21 of 2020, overlapping ownership is one result of administrative or juridical defects. Therefore, in accordance with Articles 34 and 29 Paragraph (1) of Permen ATR/BPN Number 21 of 2020, the process of canceling a legal product is carried out after research and approval by the Head of the Cirebon Regency Land Office, which is then submitted to the Head of the West Java Regional Land Office. When the application is approved by the Head of the West Java Regional Land Office, then the Head of the Cirebon Regency Land Office can execute the cancellation of SHM Numbers 937, 938, and 1269/Kebonturi Village which overlap the ownership. After the overlapping certificates of ownership have been cancelled, the process carried out is splitzing SHM Number 105/Kebonturi Village, this aims to obtain legal certainty over the land whose certificate has been cancelled.

#### IV. CONCLUSION

The existence of overlapping certificates of ownership indicates that even though a parcel of land already has a certificate, it does not fully provide certainty and perfect legal protection for the owner. This is because in the case of overlapping certificates of ownership in one field not only one certificate is issued but more. So, for the subject, object, and the status of their rights is unclear before being examined by the party with authority. The Land Office in this case seeks to provide legal certainty to parties who have objections due to overlapping certificates of ownership, namely by canceling legal products issued in that one area.

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