



## **THE ROLE OF THE PPAT NOTARY IN PROVIDING PRIVATE SERVICES TO LAND FORMER TRADITIONAL OWNERSHIP**

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### **Abstract**

After the UUPA came into effect, all land rights throughout Indonesia were subject to land law regulated by the UUPA, in fact in society there were still rights to land from customary law, so that the conversion was carried out from an atmosphere of customary law to become UUPA. For legal certainty over land rights, the Head of the National Land Agency issued a special policy on customary land registration procedures.

**Keywords:** Role of Notary; Land rights; Traditional Land.

### **INTRODUCTION**

With the enactment of Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA), there have been fundamental changes to agrarian law in Indonesia, especially in the land sector.<sup>2</sup> The UUPA has eliminated dualism in land law to move towards legal unification, namely legal unity in the field of land law in Indonesia.

With the National Land Law, it is hoped that legal certainty will be created in Indonesia. For this purpose, the government is following up with the

provision of written legal instruments in the form of other regulations in the field of national land law that support legal certainty and furthermore, through existing regulatory instruments, law enforcement is carried out in the form of effective land registration.

According to Article 9 of Government Regulation No. 24 of 1997 concerning Land Registration, what can be the object of land registration is:

- a. land areas owned by ownership, business use

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<sup>2</sup> Budi Harsono, *Indonesian Agrarian Law volume I National Land Law*, Jakarta: Djangkat, Jakarta, 2007, p. 1

- rights, building use rights and use rights
- b. mortgage right
- c. national land
- d. waqf land
- e. ownership rights to apartment units
- f. mortgage right

In fact, in the community there are still eigendom rights, opstal rights, erfpacht rights and the rights of natives or princes of the earth that are subject to Customary Law that do not have written evidence, which the local residents often refer to as customary land, for example land of ulayat rights, customary land, land Yasan, Gogolan land and others.

Based on the provisions of Article 9 of the UUPA above, it is clear that land originating from customary land rights cannot be registered. If these lands cannot be registered, it will certainly be detrimental to the land owners, because they will lose their rights. Therefore, a way is needed so that this land can be registered, so the way that can be done is by converting the land which originates from rights that are subject to Customary Law. With the land conversion of customary land rights, it is hoped that no one's rights will be harmed by the community because after conversion these rights will be able to be registered.

Conversion of former land rights is one of the instruments to fulfill the principle of legal unification through the UUPA. Regulation of the Minister of Land and Agrarian Affairs (PMPA) Number 2 of 1962 regulates provisions regarding the normative confirmation of conversion and registration of former Indonesian rights to land. This conversion regulation is an

implementation of the transitional provisions of the UUPA.

The purpose of registering a land conversion is to provide legal certainty, legal protection to land rights holders or produce a Certificate of Proof of Rights which is valid as a strong means of proof.<sup>3</sup>

Land ownership in Indonesia is generally controlled by the Indonesian people, but legally this is not yet the case. This can be seen from the large number of Indonesian people who control the land but do not have legal proof of ownership through ownership of the land certificate they own.

The Minister of Agrarian Affairs and Spatial Planning or the Head of the National Land Agency said that in 2019 only around 40% of Indonesians had land certificates. At the beginning of 2020, there was an increase in land certificate registrations reaching 11.24 million registrants. Of course, land certificate registrants have increased from previous years. However, as many as 50% of land problems are still found in Indonesia.

Indeed, to obtain ownership rights to land in Indonesia as mentioned above through several methods, namely:

1. Occurs because of customary law
2. Occurs due to government determination, according to the methods and conditions determined
3. This occurs because of the provisions of the law.<sup>4</sup>

To realize orderly land administration, this is done by carrying out land registration *Register Registry* (Land registration that aims to guarantee legal certainty).<sup>5</sup> The proper

<sup>3</sup> Agung Raharjo, *Registration of Customary Land Conversion by Heirs*, Thesis, Diponegoro University, Semarang, 2010, Pg. 14

<sup>4</sup> Jayadi Setiabudi, *On. Cit*, pg 16.

<sup>5</sup> Long live Santoso, *Op.Cit*, pg 21.

implementation of land registration is the basis and embodiment of orderly administration in the land sector. To realize orderly land administration, every plot of land and apartment unit, including the transfer, encumbrance and deletion of rights to the land parcel and ownership rights to the apartment unit, must be registered. By carrying out land registration, the land will of course also be given legal status, in the form of rights to the land in accordance with the rights applied for. If someone applies for ownership rights, building use rights or business use rights, then with the registration of the land the legal status of the land arises as ownership rights, building use rights or business use rights in the name of the approved applicant. This means that by registering someone's land, they will have ownership rights over the land, building use rights or business use rights over the land and other rights. If it is not registered, there will be no ownership rights, building use rights or business use rights or use rights and other rights.

Likewise, after the UUPA came into force, customary land also experienced changes. Everything related to customary land (customary rights, buying and selling land, etc.) has changed. If before the enactment of the UUPA customary rights still belonged to the local customary law association which had been controlled by their ancestors for a long time, then after the enactment of the UUPA customary rights were still recognized. It is stated in Article 3 of the UUPA, "Customary rights and similar rights of customary law communities are still recognized as long as in reality they still exist in the community." If the process of individualization of customary rights begins to become urgent, it can give special recognition to individual rights. Then the obligation is carried out based on the UUPA that these customary lands need to be registered to obtain a

certificate so that there is legal protection and legal certainty regarding rights to the customary land.

## METHOD

This research is normative legal research which examines legislation regarding land registration and ownership rights to customary land. The background of the problem is that there is legal ambiguity in the applicable laws and regulations, where the rules governing the status of ownership certificates for customary land do not yet exist, because once it is registered it formally loses its customary status.

## ANALYSIS AND DISCUSSION

Land registration activities for the first time produced proof of title, in the form of a certificate. The meaning of certificate according to Article 1 number 20 of Government Regulation Number 24 of 1997, is a certificate of proof of rights as intended in Article 19 paragraph 2 letter c of the Basic Agrarian Law, for land rights, management rights, waqf land, ownership rights to apartment units. and mortgage rights, each of which has been recorded in the relevant land book. The nature of proof of certificates as proof of rights is contained in Article 32 of Government Regulation Number 24 of 1997, namely:

1. A certificate is a proof of rights which acts as a strong means of proof regarding the physical data and juridical data contained therein, as long as the physical data and juridical data are in accordance with the data in the measurement letter and land book in question;

2. In the event that a plot of land has been legally issued a certificate in the name of a person or legal entity who acquired the land in good faith and actually controls it, then other parties who feel they have rights to the land can no longer demand the implementation of that right if within 5 (five) years after the

issuance of the certificate, do not submit a written objection to the certificate holder and the Head of the Land Office concerned or file a lawsuit in court regarding land control or the issuance of the certificate.<sup>6</sup>

The majority of Indonesian people adhere to customary law so that customary law is the basis for the formation of National Land Law. Land law is a system of independent branches of law that regulates the juridical aspects of land, which are called land tenure rights. The legal provisions governing land control rights can be arranged into one unit which constitutes one system.<sup>7</sup> These governing provisions make customary law the basis for formation. Urip Santoso stated that Customary Law is the main basis for the formation of National Agrarian Law, which can be concluded in the Preamble to the UUPA which states;

"That in connection with what is mentioned in the considerations, it is necessary to have a National Agrarian Law, which is based on customary law regarding land, which is simple, and guarantees legal certainty for all Indonesian people without ignoring elements that rely on religious law"<sup>8</sup>

This is in accordance with the explanation of the considerations in the UUPA which states that national land law is prepared based on customary law. This statement can be found, among others, in:

- a. General Explanation number III (1)
- b. Article 5 and its explanation.

In the General Explanation number III (1) of the UUPA it is stated that:

Naturally, the new Agrarian Law must be in accordance with the legal awareness of the people at large. Because the Indonesian people are largely subject to customary law, the new agrarian law will also be based on the provisions of customary law as original law, perfected and adapted to the interests of society in a modern state and in its relations with the international world and adapted to Indonesian socialism. As is understood, customary law in its growth cannot be separated from the influence of politics and capitalist colonial society and feudal self-government society.

Likewise, in the General Explanation number III (1) UUPA above, in article 5 it is stated that;

Agrarian law that applies to earth, water and space is customary law, as long as it does not conflict with national and state interests, which is based on national unity, with Indonesian socialism and with other regulations, all while taking into account the elements that rely on religious law.

Customary law is the main source in drafting national land law, making everything from the basic framework of customary law the first source, this was emphasized by Budi Harsono that:

The new Land Law which is formed using materials from customary law, in the form of legal norms outlined in statutory regulations as written law, is written positive national land law. UUPA is the first result.

In this connection, R. Roestandi Ardiwilaga stated that customary property rights are obtained due to "clearing the land, after first making boundary marks, and after prior voting

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<sup>6</sup> Ibid., p. 44

<sup>8</sup> Urip, Op. Cit., p. 5-6

<sup>7</sup> Ibid., p. 17

rights and the right to collect the proceeds. "Land owned in this way can be inherited, transferred (hand over), mortgaged."<sup>9</sup> In line with this, Dianayu Permata Sari stated that ownership rights to land according to customary law are obtained from "clearing the land, because *carrying mud* (in the former Kayuagung Clan it is called land *push*), or because of a gift from the Head of the Law Guild. These property rights can be sold, exchanged, gifted, loaned and inherited."<sup>10</sup>

Still in relation to control of ownership rights over land according to customary law, Boedi Harsono said that:

The more work a person does on a piece of land, the closer their relationship to the land in question and the stronger their rights to that land. By getting stronger<sup>11</sup> control over parts of the common land by its residents, naturally the strength of customary rights becomes weaker and weaker over time, until finally they are completely lost.

With this UUPA, the era of dualism and pluralism of agrarian law in Indonesia disappeared, since then in Indonesia there has been *unification of agrarian law*. There is no longer customary agrarian law and no more western civil agrarian law, what exists is agrarian law based on the UUPA and its implementing regulations. Likewise with land rights, there are no more land rights according to customary law and no more land rights according to western civil law, what exists are land rights according to the UUPA as regulated in Article 16 UUPA.

In connection with the status of land rights that arise based on customary law and western civil law after the enactment of this UUPA, these land rights must be converted into land rights according to the UUPA.

Conversion is the arrangement of land rights that existed before the UUPA came into force to enter the UUPA system.<sup>12</sup> Conversion provisions regarding land rights have been regulated in the Provisions for Conversion of UUPA Article II paragraph 1, namely: land rights which give authority as or similar to the rights referred to in Article 20 paragraph 1, as mentioned by the names below, which exist at the start of the enactment of this law, namely agrarisch eigendom rights, property, foundations, andarbeni rights over druwe, rights over village druwe, pesini, grant sultan, landirijenbezitrecht, altijddurende erfpacht, business rights over former private land and rights other names under whatever name, as will be further confirmed by the Minister of Agrarian Affairs, since the entry into force of this law, the property rights referred to in Article 20 paragraph (1), unless the owner does not meet the requirements as mentioned in Article 21. Then continue in paragraph 2 which states that the rights mentioned in paragraph 1 belong to foreign nationals who, in addition to their Indonesian citizenship, have foreign citizenship and legal entities that are not designated by the government as those in Article 21 paragraph (2) as business use rights or building use rights. in accordance with the designation of the land, as will be

<sup>9</sup> R. Roestandi Ardiwilaga, Op.cit., p.21

<sup>10</sup> Dianayu Permata Sari, 2015, *Regulation of "Nyurung" Land Ownership in Kayuagung City District, Ogan Komering Ilir Regency*, Master of Law Study Program Thesis, Faculty of Law, Sriwijaya University, Palembang, p.7.

<sup>11</sup> Boedi Harsono, 1997, *Indonesian Agrarian Law (History of the Formation of the Basic Agrarian Law, Its Content and Implementation)*, Djangkat, Jakarta, p.182

<sup>12</sup> A.P. Protection, 1990:1.

further confirmed by the Minister of Agrarian Affairs.

Then in Article VI regarding the Conversion Provisions in the UUPA it states that the land rights that give authority are the same as or similar to the rights referred to in article 41 paragraph (1) as mentioned by the names below, which existed at the time the Law came into force. These are: the rights of vruchtgebruik, gebruik, grant controleur, bruikleen, ganggam bauuntuik, anggaduh, bent, lungguh, pituwas, and other rights under whatever name, which will be further confirmed by the Minister of Agrarian Affairs, since the Law comes into force This becomes the use right referred to in article 41 paragraph (1) which provides the authority and obligations that the right holder has at the time this Law comes into force, as long as it does not conflict with the spirit and provisions of this Law.

Article VII paragraph (1) explains in detail that the permanent rights to gogolan, beaten or sanggan which existed at the time this Law came into force become the property rights referred to in Article 20 paragraph (1). Paragraph (2) states that non-permanent gogolan, pekulen or sanggan rights become use rights in Article 41 paragraph (1), which provides the authority and obligations of the rights holders upon the entry into force of this law. Paragraph (3) states that if there is doubt whether a gogolan, pekulen or sanggan right is permanent or non-fixed, then it is the Minister of Agrarian Affairs who decides.

Article 3 of the Regulation of the Minister of Agriculture and Agrarian Affairs Number 2 of 1962 concerning Confirmation of Conversion and Registration of Former Indonesian Rights to Land states that this article regulates rights that are not described in

a land title deed, so the person concerned is submitted:

- a. Evidence of his rights, namely evidence of land tax receipts/*verponding* Indonesia or proof of a letter of grant of rights by the authorized agency (if available, also include a measurement letter)
- b. Village Head's statement letter confirmed by the assistant Wedana (district head) who:
  - 1) Confirm the letter or letters proving the right.
  - 2) Explain whether the land is residential land or agricultural land.
  - 3) Explain who has the right, if there is a copy of the land sale documents.
- c. Proof of valid citizenship from the right holder.

From the provisions of Article 3, specifically for land that is subject to Customary Law but is not registered in the conversion provisions as land that can be converted into a land right according to the provisions of the UUPA, but the land is recognized as a customary right, then this must be done with efforts "Confirmation of Rights" submitted to the Head of the local Land Registry Office followed by preliminary evidence such as proof of tax, a sale and purchase letter made before the UUPA came into force and a letter confirming a person's rights and also explaining that the land is for housing or for agriculture and information about the nationality of the person concerned. .

Article 7 paragraph (1) of this Ministerial Regulation explains that "Regarding rights that do not exist or no longer have evidence, as intended in Articles 2 and 3, then at the request of the interested person a "recognition of

rights" is given, based on the results of the Committee's examination. The inspection of Land A is stated in the Decree of the Minister of State for Agrarian Affairs No. Sk.113/Ka/1961 (TLN Number 2334). Recognition of these rights was given after the results of the Committee's examination were announced for 2 consecutive months in the offices of the Village Head, Assistant Wedana and Head of Agrarian Affairs of the area concerned and no one expressed objections, either regarding the rights, who owns them or their location, area and boundaries. the land boundary. Paragraph (2) states that the recognition of the rights referred to in paragraph (1) of this Article is given by the Head of the Agrarian Inspection concerned. If according to the Decree of the Minister of State for Agrarian Affairs No. Sk.112/Ka/1961 in conjunction with SK 4/Ka/62 (TLN Numbers 2333 and 2433) which has the authority to grant recognized rights is a lower agency, so that agency provides the recognition. Paragraph (3) states that taking into account the provisions in Article 6, the decision on the recognition of rights confirms the conversion of the rights into ownership rights, building use rights, business use rights or use rights, which upon the request of those interested, will be registered by Head of the Land Registration Office concerned. In areas where Government Regulation Number 10 of 1961 has begun to be implemented, the recognition of rights will only come into effect if the rights have been registered at the Land Registration Office. Upon request, he is entitled to a certificate or temporary certificate, subject to a fee according to the provisions of Government Regulation Number 10 of 1961.

Furthermore, Article 24 paragraph (1) PP Number 24 of 1997 determines that for the purposes of registering rights, land rights originating from the conversion of old rights are

proven by means of evidence regarding the existence of such rights in the form of written evidence, witness statements and or the relevant statement, the level of truth of which is considered by the Adjudication Committee in systematic land registration or by the Head of the Land Office in sporadic land registration to be sufficient to register the rights, rights holders and the rights of other parties encumbering them. Then it is stated in Paragraph (2) that in the event that the complete means of proof as intended in paragraph (1) are not or are no longer available, registration of rights can be carried out based on the fact of physical control of the land plot in question for 20 (twenty) years or more in total. successively by the registration applicant and his predecessor, with the following conditions: a. Such control is carried out in good faith and openly by the person concerned as the person entitled to the land, and is confirmed by the testimony of a trustworthy person. b. Such control, both before and during the announcement as intended in Article 26, is not disputed by the customary law community or village/subdistrict concerned or any other party.

In our society there are still many who do not have complete proof of land ownership or such proof is no longer available. This causes difficulties for the community because they cannot apply for registration of rights to former customary land. Therefore, a Certificate from the Village Head/Lurah is needed as confirmation of the ownership, control, use, exploitation of a plot of land in accordance with the physical reality on the ground, the history of ownership, transfer or acquisition of land in accordance with the records in the village/kelurahan register book and information regarding whether there is a dispute over the land with other parties and is not used as collateral for a debt.

Based on the Circular Letter of the Head of the National Land Agency No

9/SE/VI/2013 concerning Certificates for Former Customary Land Land, this was created in order to provide legal certainty for the format and material of the Certificate from the Village Head/Lurah as a completeness of the application for registration of rights to former customary land.

Issuance of SE Head of Land Agency No. 9/SE/VI/2013 is based on UUPA, PP no. 24 of 1997 concerning Land Registration, Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency No. 3 of 1997 concerning Provisions for the Implementation of PP No. 24 of 1997 and Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency No. 5 of 1999 concerning Guidelines for Resolving Problems with Customary Law Communities' Land Rights.

There are a number of things that are required as part of the application for the registration of rights to former customary land, among others:

1. Subject of rights (owner)
2. Location, boundaries and area of land
3. Regarding control, use and utilization of land
4. History of ownership, transfer or acquisition of land
5. Certainty is not an asset of the Government or other parties and is not included in the forest area
6. Not being used as collateral for a debt and not in dispute with another party.

According to SE Head of Land Agency No. 9/SE/VI/2013, a Certificate of Former Customary Land cannot be used as proof of land ownership for land that does not meet the criteria number 1 above, namely:

1. Article 24 paragraph (2) PP No. 24 of 1997, in the absence of

written evidence, witness statements and/or relevant statements which have a level of truth by the Adjudication Committee in systematic land registration or by the Head of the Land Office in sporadic land registration, then the registration of rights can be carried out based on the fact of control physical land plot in question for 20 years or more consecutively by the registrant applicant and his predecessors provided that: the control is carried out in good faith and openly, the control is not disputed by the customary law community or village/sub-district concerned or any other party. other;

2. Article 4 paragraph (1) letter a of the Agrarian Permen/ Head of BPN No. 5 of 1999, the control of land areas that are included in ulayat land as referred to in Article 2 by individuals and legal entities can be done by members of the customary law community concerned with the right of control according to the applicable customary law provisions, which if desired by the right holder can be registered as appropriate land rights according to the UUPA;

Article 76 paragraph (3) Minister of Agrarian Affairs/Head of BPN Regulation No. 3 of 1997, in the event that there is no evidence of land ownership as intended in paragraphs (1) and (2), then the application must be accompanied by a statement letter from the applicant and a statement from the Village Head/Lurah.

For the former customary ownership land above, if the party who wants to do so *process* the certificate is that the original owner of the customary land is listed, so there is no need for prior sale and purchase. *If* If inheritance has occurred, for example, it must be preceded by making an inheritance statement and the usual inheritance procedures. Meanwhile, if the acquisition of rights is carried out through a buying



and selling mechanism, then the buying and selling process must first be followed.

*Certification* Customary land in land law terms is known as first-time land registration, namely land registration activities carried out on land registration objects that have not yet been registered. There are two types of this activity, first, systematic land registration, which was initiated by the government. Second, sporadic land registration which is carried out independently/on the initiative of the land owner.

The documents that must be completed are:

1. Recommendation letter from the village head/district head regarding the land to be registered.
2. Create a no-dispute letter from the RT/RW/Lurah.
3. Application letter from the land owner to carry out certification (this letter can be obtained at the local Land Office).
4. Power of attorney (when management is delegated to another person, for example PPAT).
5. The identity of the land owner (applicant) is legalized by an authorized public official (usually a Notary) and/or his/her proxy, in the form of a photocopy of KTP and Family Card, inheritance certificate and birth certificate (if the application for certification is made by an heir).
6. Evidence of the requested rights:  
girik/petok/rincik/ketitir or other evidence as proof of ownership.
7. The affidavit has put up a boundary sign.

8. Photocopy of Tax Due Tax Return (SPPT) and Temporary Receipt Letter (STTS) for the current year.

After everything is completed and registered at the local Land Office, the series of land registration activities begins. The Land Office will inspect the location and measure the land, issue a picture of the situation/measurement letter, process Committee A's considerations, make an announcement, ratify the announcement, the applicant will pay the Land and Building Rights Acquisition Fee (BPHTB) according to the area stated in the picture of the situation/revenue money, and finally, the issuance of land certificates.

## CONCLUSION

Based on the description above, it can be concluded that since the UUPA came into force, all land rights throughout Indonesia must be subject to the provisions of the UUPA for land that has the status of customary land rights carried out through conversion, but unfortunately our society usually does not have. If the evidence is complete, then the Head of the National Land Agency will adopt a policy of affirming rights and recognizing rights. So the procedure for registering rights to customary land has its own specific process with the aim that rights to customary land have legal certainty, so they need to be certified.

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