

**JURIDICAL REVIEW IMPLEMENTATION OF LAND  
REGISTRATION ACCORDING TO GOVERNMENT REGULATION  
NO. 18 OF 2021 CONCERNING MANAGEMENT RIGHTS, LAND  
RIGHTS, FLAT UNITS AND LAND REGISTRATION**

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**Abstract**

*There are differences from the implementation of land registration related to the announcement of land registration. The Government Regulation should be implemented properly, but in fact in the field the regulation still does not provide certainty. In order to provide legal certainty to the community with the issuance of Government Regulation Number 18 of 2021. The purpose of this study was to determine and analyze the legal arrangements for land registration according to Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration, and to identify and analyze Government Regulation No. 24 of 1997 concerning Land Registration with Government Regulation No. 18 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration, and to find out and analyze the legal consequences of changes to Government Regulation Number 24 of 1997 after the enactment of Government Regulation Number 18 of 2021. This research is normative legal research. Approach methods used in this research are Legislative Approach, Conceptual Approach, Comparative Approach; and analytical approach. Based on the research findings, it can be concluded that Regulations which is the legal basis that is still valid for Government Regulation Number 18 of 2021 concerning Management Rights of Land Rights, Flats and Land Registration Units which are still being carried out without first revoking Government Regulation Number 24 of 1997 concerning Land Registration which has a period of The announcement is different between the two Government Regulations, namely, with the principle of Lex Posterior Derogat Legi Priori.*

*Keywords: Land Registration, Management Right, Land Right, Announcement*

**1. INTRODUCTION**

Human life is inextricably linked to the land. Land is both a source of life and a place to live for humans, especially for the people of Indonesia, where the majority of the population still relies on land for survival, both for agriculture and plantations. Guarantees of legal certainty in the land sector will be critical; comprehensive, complete, and explicit legal instruments that are consistently applied will be required to provide legal certainty in the land sector and to maintain land registration in order to ensure legal certainty over land.

The state is given the constitutional right to control over water, earth, and the natural resources contained therein. The state controls and is used as much as possible for the prosperity of the people as stipulated in Article 33 Paragraph (3) of the 1945 Constitution (Sugiharto et al., 2015).

Article 33 paragraph (3) of the 1945 Constitution which stipulates that: "Earth, water and natural resources contained therein shall be controlled by the state and used as much as possible for the prosperity of the people."

According to Article 4 of the Agrarian Law, land is defined as the earth's surface. Land plays a significant part in human life since humans and land have always had a direct relationship by nature. Because land is the major capital and the only capital for almost all of Indonesia, the relationship between humans and land can be defined as very close in this context.

One of the objectives of the establishment of the Basic Agrarian Law is to lay the foundations for providing legal certainty and protection regarding land rights for the Indonesian people as a whole. In order to achieve this, land registration is carried out. Land registration in the Basic Agrarian Law is regulated in Article 19.

Land is part of the earth's surface which is legally regulated regarding land rights (Waskito & Anowo, 2017). One of the objectives of the establishment of the Basic Agrarian Law is to lay the foundations for providing legal certainty and protection regarding land rights for the Indonesian people as a whole. In order to achieve this, land registration is carried out. Land registration in the Basic Agrarian Law is regulated in Article 19.

Regarding the implementation of land registration throughout Indonesia, it is based on Government Regulation Number 24 of 1997. The implementation of land registration is carried out by the National Land Agency. Land implementation includes land registration activities for the first time and land maintenance (Arba, 2018).

According to the provisions of Article 1 point 1 of Government Regulation No. 24 of 1997, land registration is a series of activities carried out by the government on a continuous, continuous, and regular basis, including the collection, management, bookkeeping, and presentation and maintenance of physical and juridical data, in the form of maps and lists, regarding land parcels and housing units of flats, as well as the provision of proof of title for parcels of land that already have a title (Arba, 2018).

However, until now the rules regarding land registration are still in conflict between the Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration and Government Regulation of the Republic of Indonesia Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration.

In Article 26 of the Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration, it is explained that:

*"The list as referred to in Article 25 paragraph (2) along with a map of the relevant land parcel or parcels as referred to in Article 20 paragraph (1) shall be announced within 30 (thirty) days in systematic land registration or 60 (sixty) days in sporadic land registration to provide opportunities for interested parties to file objections."*

Meanwhile, in Article 88 of the Government Regulation of the Republic of Indonesia Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration, it is explained that:

- "(1) Announcement of the results of collecting physical data and juridical data:*
- a. in systematic land registration is carried out for 14 (fourteen) calendar days.*
  - b. in sporadic land registration for 30 (thirty) calendar days."*

This property registration process is not only governed by one statutory regulation, but it is also governed by other rules. Legislation frequently overlaps one regulation with another. Even now, the rules governing land registration have been in contradiction with government regulation number 18 of 2021 governing management rights, land rights, apartment units, and land registration,

resulting in a norm conflict with government regulation number 24 of 1997 governing land registration.

Because there are discrepancies in how land registration is executed in relation to the announcement of land registration, the Government Rule should be appropriately implemented, but in practice, the regulation still lacks confidence in the field. As a consequence, to provide the community with legal certainty, the issuing of Government Regulation Number 18 of 2021.

## **2. THEORITICAL AND CONCEPTUAL FOUNDATION**

### **2.1. Legal Certainty Theory**

According to Hans Kelsen, law is a system of norms. Norms are statements that emphasize aspects of "should" or *das sollen*, by including some rules about what must be done. According to Gustav Radbruch quoted by Eva Fadillah, the law must contain three (3) identity intentions, namely as follows: (Fadillah, 2016)

- 1) The principle of legal certainty (*rechmatigheid*). This principle is a juridical view.
- 2) The principle of legal justice (*gerechtigheid*). This principle reviews from a philosophical point of view, where justice is equal rights for all before the court.
- 3) The principle of legal benefit (*zwechmatigheid* or *doelmatigheid* or utility). The principle that accompanies the principle of legal certainty and justice.

This legal certainty is realized by law with its nature which only makes a general rule of law (Wantu, 2011). The general nature of the rule of law proves that the law does not aim to achieve justice or benefit, but solely for certainty.

### **2.2. Justice Theory**

Justice can be interpreted as an act that is fair or impartial (Aristoteles, 1997). Justice is one of the goals of law. The embodiment of justice can be seen in the scope of everyday life in society and the state.

Justice according to Aristotle's view is divided into 2 (two) kinds, namely: "*Distributief*" justice is justice that gives each person a portion according to his achievements. Meanwhile, "*communitatief*" Justice gives equal amount to everyone without discriminating against their achievements in this case related to the role of exchanging goods and services (van Apeldoorn, 1996).

According to John Rawls, justice is the main virtue of the existence of social institutions (Faiz, 2009). Meanwhile, Hans Kelsen (2011), in his book *General Theory of Law and State*, is of the view that law as a social order can be declared fair if it can regulate human actions in a satisfactory way, so that they can find happiness in it (Kelsen, 2011).

Fair is putting things in their place, receiving rights without more and giving others without less and giving the rights of everyone who is entitled completely without more without any less between those who are entitled in the same situation, and punishment of bad people or those who violate the law, in accordance with their mistakes and violations (Mansyur, 1985).

### **2.3. Legality Theory**

Legality is one of the most important theories in the framework of analyzing the process of drafting laws and regulations (Salim & Septiana, n.d.).

Hans Kelsen said that the meaning of justice is legality, where a general rule is fair if it is applied according to the written rules that govern it, and the same applies to all similar cases (Kelsen, 2011). The principle of legality was built with the aim of legitimizing the law in the power of the government in order to create a legal state where the meaning is a state based on law; The law guarantees justice and protection for all people in the territory of the country concerned. All state activities are based on law or in the context of the Indonesian rule of law, namely a state based on Pancasila and the Constitution which upholds human rights and guarantees that all citizens are equal

before the law and government and are obliged to uphold the law and the government without any exception.

Meanwhile, in the Black's Law Dictionary, legislation has many meanings. In this definition, the definition of legislation is very broad, not only establishing or enforcing laws, but also being defined by: (Salim & Septiana, n.d.)

1. The power to make laws;
2. Legislative action;
3. Drafting and enactment of laws;
4. Making laws through laws, in contrast to laws made and determined by the courts;
5. Formulation of rules for the future. Laws are set by the legislature.”

#### **2.4. Land rights**

Land rights give a power or authority to the subject of the right or also known as the holder of the right to utilize or exercise the right to ownership of the land (Santoso, 2015). Land rights have been regulated in Law no. 5 of 1960 Article 4 paragraph 1 (one) which explains that based on the right to control the state then various kinds of rights to a surface of the earth are determined which are then called land, which can be given and owned by individuals or collectively, as well as other legal entities. Based on the description above, the right to a surface of the earth is then also referred to as the right to land which comes from the right to control the state over the land (Santoso, 2015).

#### **2.5. Land Management Rights**

Management Rights in Dutch known as *Beheersrecht*, which at that time meant the Right of Control (Parlindungan, 2015). The definition of management rights by experts is often reviewed in terms of meaning as well as in terms of the substance stipulated in a statutory regulation regarding the existence of management rights (Soerodjo, 2014).

Maria SW Sumardjono stated that:

*"Management rights speak of the right to control the state in terms of the authority to implement it is given or delegated to the right holder".* (Sumardjono, 2008)

In the UUPA, the term Management Rights does not contain a term, so in particular the extent of the term management rights is outside the provisions of the UUPA (Parlindungan, 2015). As explained that on the basis of the right to control the state, the implementation of the right to control the state can be delegated to autonomous regions and customary law communities, this is so far as it does not conflict with government regulations and applicable laws and national interests, as described in article 2 paragraph 4 ( four) UUPA.

#### **2.6. Land Registration**

According to Article 1 paragraph 1 of Government Regulation Number 24 of 1997, Land Registration is a series of government-led activities that include the collection, processing, bookkeeping, presentation, and maintenance of physical and juridical data, in the form of maps and lists, about parcels of land and flat units, as well as the issuance of certificates as proof of their rights.

Article 3 (three) Government Regulation Number. 24 of 1997 states that the purpose of land registration is:

- a) To provide legal certainty and protection to holders of rights to a plot of land, flats and other registered rights so that they can easily prove themselves as holders of the rights in question.
- b) To provide information to interested parties including the government so that they can easily obtain the data needed to carry out legal actions regarding registered land parcels

and apartment units.

- c) For the implementation of orderly land administration.

## **2.7. Flats**

Law No. 16 of 1985 explains that flats is a multi-storey building that is constructed in an environment that is divided into functionally structured parts in both horizontal and vertical directions and is comprised of units that can be individually owned and used, particularly for residential areas equipped with shared parts, objects, and common ground. According to the KBBI, Flats is a building that is planned and used as a residence by several families and has a minimum level of two floors with several residential units.

## **3. METHOD**

The type of research used in this research is normative legal research. The approach methods used in this research are the Statute Approach, the Conceptual Approach, the Comparative Approach; and analytical approach (analytical approach).

The types of legal materials used are legal materials sourced from literature studies with Primary Legal Materials, Secondary Legal Materials, and Tertiary Materials. The technique of collecting legal materials used in this research is literature study. While the analysis of legal materials in this study is descriptive.

## **4. RESULTS AND DISCUSSION**

### **4.1. Arrangements for Land Registration According to Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration**

#### **A. Land Registration Arrangements Based on Legislation**

In the regulation regarding land registration, it must be based on the principle of legality. In Black's Law Dictionary, legislation/legality has many meanings. In this definition, the definition of legislation is very broad, not only to stipulate or enforce laws, but also to mean the power to make laws; Legislative action; Drafting and enactment of laws; Making laws through laws, in contrast to laws made and determined by the courts; and/or Formulation of rules for the future. Laws are set by the legislature.

Meanwhile, regulations that are closely related to land registration based on legality theory can be explained below as follows:

- a. Law no. 5 of 1960 concerning Agrarian Principles (UUPA).

The UUPA stipulates that the land rights registered are only Ownership Rights regulated in Article 23, Cultivation Rights are regulated in Article 32, and Building Use Rights are regulated in Article 38, and Use Rights are regulated in Article 41, while Lease Rights for Buildings is not required to be registered.

However, in Article 9 of Government Regulation Number 24 of 1997 concerning Land Registration, it regulates several objects of land registration which include:

- a) Ownership Rights (*SHM*).
- b) Right to Business (*SHGU*).
- c) Right to use building on state land (*SHGB*).
- d) Right to Use State Land.
- e) Right to Use Land Management.
- f) *Waqf* Land.
- g) Ownership of Flat Units.
- h) Mortgage right (Santoso, 2010)

- b. Government Regulation (*PP*) No. 10 of 1961 concerning Land Registration as amended by

Government Regulation No. 24 of 1997 concerning Land Registration and Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Flat Units and Land Registration.

According to Article 1 paragraph 1 of Government Regulation Number 24 of 1997, Land Registration is a series of government-led activities that include the collection, processing, bookkeeping, presentation, and maintenance of physical and juridical data, in the form of maps and lists, about parcels of land and flat units, as well as the issuance of certificates as proof of their rights (Parlindungan, 2015).

Article 3 (three) Government Regulation Number. 24 of 1997 states that the purpose of land registration is:

- a. To provide legal certainty and protection to holders of rights to a plot of land, flats and other registered rights, so that they can easily prove themselves as holders of the rights in question.
- b. To provide information to interested parties including the government so that they can easily obtain the data needed to carry out legal actions regarding registered land parcels and apartment units.
- c. For the implementation of orderly land administration.

Talking about land registration and the importance of land registration. Of course, what is no less important is what land registration actually is. The terms regarding land registration in several languages are different, although the meaning in brief is of course the same. In English it is called *cadaster*, in Dutch it is called *cadasteral* and *cadastro* in French and *pendaftaran tanah* in Indonesian.

In Article 1 point (1) Government Regulation No. 24/97 states "that land registration is a series of activities carried out by the government continuously, continuously and regularly, Article 11 states that the implementation of land registration includes land registration activities for the first time and data maintenance. Land registration, and in Article 12 it is explained Land registration activities for the first time includes: collection, processing, bookkeeping, and presentation and maintenance of physical data and juridical data, in the form of maps and lists, regarding land parcels and apartment units, including the issuance of proof of rights for existing land parcels. his rights and ownership rights to the apartment unit as well as certain rights that burden it.

Thus, the definition of land registration includes measurement, mapping and bookkeeping of land; Registration of land rights and the transfer of these rights; and Provision of valid proof of rights documents as a strong evidence. In addition, land registration aims to:

- a. To provide legal certainty and legal protection to holders of rights to flats and other registered rights so that they can easily prove themselves as holders of the rights in question. Legal certainty here relates to land registration data. Land registration data according to Boedi Harsono, consists of: physical data and juridical data (Harsono, 2008).
- b. To provide information to interested parties including the government in order to easily obtain the necessary data in carrying out legal actions regarding land fields and units of flats that have been registered. Therefore, at the District / City Land Office held land registration business in what is known as a *public list* is for interested parties to do legal actions regarding a land body or certain flat units necessary and therefore they have the right to know the data stored in public lists. Public list consisting of registration map, land list, measuring letter, land book, and list of names. A *registration map* is a map that describes plots or plots of land for land clearing purposes. A *land list* is a document in the form that contains the identity of a plot of land with a numbering system. A *measuring letter* is a document that contains physical data of a plot of land in the form of maps and descriptions, which the data is taken from the registration map. A *land book* is a book that contains the origins of land ownership including the identity of the rights holder. A *list of names* is a document in the form of a list that contains information about land tenure with

a right to land, or management rights and about certain individuals or legal entities.

c. For the implementation of orderly land administration

In Government Regulation Number 10/61 it does not contain specifically in its articles concerning the principle of land registration used. Because principles are things that are principle in implementing a regulation after going through in-depth study and research, including philosophical studies. The principles of land registration are as follows:

- a) Simple, so that the basic provisions and procedures can be easily understood by interested parties, especially land rights holders.
- b) Safe, is to show that land registration needs to be carried out carefully and carefully so that the results can guarantee legal certainty according to the purpose of the land registration itself.
- c) Affordable, which is affordability for those in need, especially by taking into account the needs and abilities of the weak economic group.
- d) Up to date, is adequate completeness in its implementation and continuity in data maintenance. Available data must show the current state.
- e) Open, means that anyone can request information on data on land registration carried out by the Land Agency.

Almost all over the world, countries register land in their respective countries. Therefore, in general, there are two land registration systems, namely;

- a) The Negative System is a system that gives the owner of this land a stronger guarantee, when compared to the protection given to third parties, this system is adopted by, among others, the Netherlands, France, the Philippines.
- b) Positive system, is a system in which those who obtain land rights will be given stronger guarantees. This system is adopted by countries such as Germany, Switzerland, Austria, Australia (Chomsah, 2004).

Meanwhile, the land registration system in Indonesia uses a land registration system (registration of titles) as used by Government Regulation No. 10/61 and Government Regulation No. 24/97, which is a negative system with positive tendencies or *desclut Quasi Positive* (Pseudo-Positive) descriptions. We can see in the publication system that is used for the public with a negative system that contains positive elements, because it will produce letters of proof of rights that act as strong evidence, as stated in article 19 paragraph (2) of the UUPA. Not a pure negative publishing system (Harsono, 2008).

The holder of the right of name is listed in the land book as the owner who is protected by law, including the process of changing the name with the condition of openness (*Operbaar Beginnel*) The *Bilay pencil* which is measured is adjusted to the land registration map with a scale of 1: 1000. Hence, it is possible to see it again in the event of a land boundary dispute.

From the Quasi Positive (Pseudo-Positive) system, there are 2 registration systems implemented according to the will of Government Regulation Number 24/97, namely:

- 1) Systematic registration: Land registration is carried out by the government by forming a special committee to carry out registration, and initiatives emerge from the Government. The committee formed by the government is called Adjudication.
- 2) Sporadic Registration: Land registration is the first time regarding one or more objects of individual or mass registration. Initiatives arise from rights holders, both individually and en masse.

At the end of the land registration, of course, evidence will be issued for the recognition of rights to legal subjects from the recognized rights. As quoted by Martiman Prodjomidjoyo and Pidlo (in (Hairan, 2012)), to ensure legal certainty, there are 4 (four) theories in this evidence, namely:

- a) The theory of evidence that is merely reinforcing (*Bloot Affirmaatif*), that is, those who propose something must prove it and not those who deny or deny it.
- b) Subjective theory, that a civil process is the implementation of subjective law or aims to

maintain subjective law, which means that whoever claims or claims to have rights must prove it.

- c) The objective theory is that the plaintiff is asking the court to apply objective legal provisions to the events being filed.
- d) A public theory that gives judges more authority to seek the truth by prioritizing the public interest (Soerodjo, 2003).

Meanwhile, the certificate is in terminology or officially written "certificate". The certificate is a letter of proof of land rights, an acknowledgment and affirmation of individuals from the State on land ownership individually or jointly or as a legal entity whose name is written in it and at the same time explains the location, picture, size and boundaries of the land parcel (Hermit, 2004).

Therefore, the certificate serves as a valid proof of ownership according to the law in force in Indonesia. Government Regulation Number 10/61 and Government Regulation Number 24/97 it is clear from the land registration that a land certificate will be issued from the right holder who requests it.

Once the importance of the certificate as evidence of rights, the certificate can provide a brief description of who has the right to the land.

Then in the issuance of certificates of land rights there is also a difference between Government Regulation No. 10/61 and Government Regulation No. 24/97. The difference between the certificates is the type. In Government Regulation Number 10/61, land registration law recognizes 3 (three) types of certificates, namely: a) certificates, b) temporary certificates, and c) mortgage certificates.

Meanwhile, certificates issued after the enactment of Government Regulation No. 24/97 consist of a) certificates of land rights, b) certificates of mortgage, and c) certificates of ownership of flat units.

When we discuss certificates as legally admissible proof. Naturally, because the certificate was issued and validated by the relevant authorities, it has become genuine and persuasive proof. Along with getting legal (juridical) recognition, this is accomplished through a regulated process. This process is undoubtedly connected to the requirements for holders of land rights.

However, we can see in article 32 paragraph (2) of Government Regulation Number 24/97 that if a land parcel has been issued legally on behalf of the person or legal entity that acquired the land in good faith and in fact controlled it, the party who believes they have the right to this land can no longer demand the exercise of the right if they do not submit objections in writing to the holder of the certificate within 5 (five) years of the certificate's issuance.

This article makes it possible for such parties to sue. Furthermore, if the other party is not the true owner but is aware of the flaw in this legislation, intellectual games can arise in the legal field. In general, other evidence that can negate the power of the certificate of rights should be examined.

There is a contradiction between the legal strength of a piece of evidence, given the existing theory that a certificate is a strong piece of evidence in law. Meanwhile, the legal force of a certificate is only fully recognized if there is no lawsuit for up to five years. The long period of recognition also supports the existence of legal games. For example, certain parties try to find other evidence and then proceed to court because within a period of five years, the position of the certificate may lose. If the position of the power of the certificate is in doubt, it is certainly something natural, but if legally, the status and process have been passed by following the regulations.

## **B. Complete Systematic Land Registration and Sporadic Land Registration**

Land registration can be carried out through systematic and sporadic land registration, namely land registration activities carried out simultaneously covering all land parcels in an area or part of a village, both land owned by a land right or state land.



1. Complete Systematic Land Registration

Land registration for these rights is addressed to the rights holders in order to provide legal certainty for them, because registration of the transfer, its abolition and its encumbrance, such as the first registration or registration due to conversion, or its release will cause many legal complications if it is not registered, even though registration is strong evidence for the rights holder (Parlindungan, 2015). The aim to be achieved from the implementation of a complete systematic land registration is to provide legal certainty and protection for community land rights.

Complete Systematic, is a land registration activity for the first time that is carried out simultaneously which includes all land leveling objects that have not been registered in one village area or other names of the same level. The definition of complete systematic land registration according to Article 1 point 2 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 6 of 2018 concerning Complete Systematic Land Registration, are: Land Registration Activities for the first time which are carried out simultaneously for all Land Registration objects in the entire territory of the Republic of Indonesia in one village area or other name equivalent to that, which includes the collection of physical data and juridical data regarding one or several objects of Land Registration for the purposes of its registration. The implementation of complete systematic land registration aims to realize legal certainty and legal protection of people's land rights based on simple, fast, smooth, safe, fair and equitable and open and accountable principles, so as to improve the welfare and prosperity of the people and the country's economy, as well as reduce and prevent land disputes and conflicts (Article 2 paragraph (2) Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 6 of 2018 concerning Complete Systematic Land Registration).

2. Sporadic Land Registration

The legal basis of sporadic registration of tana is contained in Government Regulation No. 24 of 1997 on Land Registration. Sporadic land registration is the first land registration activity regarding an or some land registration object in the area or part of a village individually or en masse, and all fees are charged to the applicant, The land registration task is carried out by the Head of Office (Ka Kan) of the National Land Agency of the city / district, except certain activities that are by Government Regulation No.24 of 1997 or the relevant statutory regulations assign to other officials.

With the issuance of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units and Land Registration, it does not provide legal certainty for land ownership by applicants who have registered their land for the first time to the National Land Agency Office with a 14-day announcement systematically Article 88 and sporadically 30 days while in Government Regulation No. 24 of 1997 concerning Land Registration, the announcement for the first time registration is Systematic *30 days* Article 26 and sporadic *60 days*, while it's not just a matter of announcement that is different but there are deficiencies in Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Flats and Land Registration Units do not have new rights and there are no certificates issued, while in Government Regulation Number 24 of 1997 concerning Land Registration there are still new rights Article 23 and Certificates Issuing Article 31. The two Government Regulations are still valid and do not provide legal certainty to the applicant. This is because there has been no revocation from the Government of Government Regulation Number 24 of 1997 concerning Land Registration and Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights for Flat Units and Land Registration are derived from the Job Creation Law Number 18 of 2020.

**4.2. Procedures for Land Registration according to Government Regulation Number 24 of 1997 concerning Land Registration and Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration**

#### A. The Origin of Land Ownership

There are two ways regarding the origin of the occurrence of land ownership rights, namely: *derivatif* and *origanair*.

By means of a *derivatif* that land rights are obtained through the transfer of rights, either by law (switching) or because of law making (transferred). The transfer is due to law, occurs because of inheritance, while the transfer is due to legal action, occurs due to buying and selling, exchanging or grants.

By *origanair*, it is intended that the rights to the land are obtained in original (*origanair*) meaning that the land has never been controlled or owned by anyone. In other words, the person who controls the land is the first person (in the case of movable objects, for example: a car, the person who first controls/owns the car is known as first-hand *origanair*: the person who receives the transfer of rights: second, third, and so on) the same as the *derivatif*. Obtaining ownership rights to land (originally) can occur in three ways, namely: a) According to customary law, b) according to the provisions of the law, c) according to government stipulations, and d) according to customary law.

The process for the creation of property rights and other rights is regulated in two Regulations of the Minister of Home Affairs (*PMDN*), namely:

- a. *PMDN* Number 5 of 1973 concerning Provisions concerning Procedures for Granting Land Rights.
- b. *PMDN* Number 1 of 1977 concerning Procedures for Application and Settlement of the Granting of Rights to Parts of Land with Management Rights and their Registration.

Meanwhile, land registration according to Government Regulation Number 24 of 1997 which is a refinement of Government Regulation Number 10 of 1961 article 19 (paragraph 2) includes: Measurement, mapping, bookkeeping of land, registration and transfer of land rights and the provision of proof of rights as a strong sign of evidence (Harsono, 2008). The elements of the land registration can be described as follows:

1. There is a series of activities. Refers to the existence of various activities in the implementation of land registration that are related to one another, sequentially into a unified series which leads to the availability of data.
2. Done by the Government. The implementation of land registration in modern society is a state task produced by the government for the benefit of the people in order to provide legal certainty in the land sector (Santoso, 2010).
3. Continuously Continuously. Refers to the implementation of activities that once started will never end. The data that has been collected and available must always be maintained, in the sense that it is adjusted to changes that occur later, so that it remains in accordance with the latest state (Santoso, 2010).
4. Regularly  
Shows that all activities must be based on appropriate laws and regulations, because the results will be evidence according to law, even though the power of proof is not always the same in the laws of the country that administers it (Santoso, 2010).
5. Plots of Land and Flats  
Shows that land registration activities are carried out on Ownership Rights, Right to Business, Right to Build, Rights to Use, HPL, *Waqf* Land, Property Rights on Flat Units, Mortgage Rights, and State Land (Santoso, 2010).
6. Provision of Certificate of Evidence  
Land registration activities for the first time use certificates of proof of rights in the form of certificates on land parcels that already have rights and certificates of ownership of flat units. Certificate is a certificate of proof of rights as referred to in the UUPA Article 19 paragraph (2) letter c for land rights, HPL, *waqf* land, property rights to flat units and mortgage rights, each

of which has been recorded in the relevant land book (Santoso, 2010).

7. Certain Rights That Overwhelm Him

In land registration, land registration objects can be encumbered with other rights, such as Ownership Rights, Right to Business, Right to Build, Rights to Use, and Ownership Rights to Flat Units as collateral for Debt with encumbered Mortgage Rights, or Ownership Rights to land encumbered with Rights. dependents, or ownership rights to land encumbered with Right to Build and Right to Use (Santoso, 2010).

Meanwhile, in Land Registration, the following conditions are required:

- a) The application form that has been filled out and signed by the applicant or his/her proxy on sufficient stamp duty.
- b) Power of attorney if authorized.
- c) Copy of identity (*KTP, KK*) of the applicant and his/her proxy if authorized, which has been matched.
- d) Proof of land owner/customary title/former customary property.
- e) Photocopy of the current year's *SPPT PBB* which has been matched with the original by the counter officer and submission of proof of *SSB (BPHTB)*.
- f) Attach proof of *SPP/PPH* in accordance with the provisions.

While in the land registration fee, the fee rate is in accordance with the provisions of the Government Regulation on the type and rate of the type of non-tax state revenue applicable to the National Land Agency of the Republic of Indonesia. Land Registration Fee Under the provisions of Article 61, which reads:

- (1) The amount and method of payment of fees in the context of implementing land registration activities are regulated by a separate Government Regulation.
- (2) Upon the request in question, the Minister or the appointed official may release the applicant from part or all of the costs as referred to in paragraph (1), if the applicant can prove that he is unable to pay the fees.
- (3) For registration of the transfer of rights due to inheritance which is submitted within 6 (six) months from the date of death of the testator, no registration fee is charged.
- (4) The procedure for obtaining exemption from land registration fees is regulated by the Minister.

First-time land registration, including Conversion, recognition and affirmation of rights:

- a. Conversion: defined as the conversion of land rights before the enactment of Law no. 5 of 1960 into land rights in Law no. 5 of 1960
- b. Recognition: is defined as a land right where there is no evidence of ownership but the fact that the person has physical control for 20 years or more has been proven or his predecessors can be recognized as property rights on behalf of the person concerned.
- c. Affirmation: Defined as affirmation of land rights that have been converted or have been recognized

In this case, land registration aims to:

- a. To provide legal certainty and legal protection to holders of rights to a plot of land, flats and other registered rights so that they can easily prove themselves as holders of the rights in question.
- b. To provide information to interested parties, including the government, so that they can easily obtain the data needed to carry out legal actions regarding registered land parcels and apartment units.
- c. For the implementation of orderly land administration.

Meanwhile, there are fees regarding land registration services, such as:

1. Measurement service fee:

Land area x *HSBKu* + IDR 100,000  
500

2. Land inspection service fee by Committee A:

Land area x *HSBKu* + IDR 350,000,  
500

3. Certificate Issuance Rates (First Time Registration): IDR 50.000,- per field.

*HSBKu* : Special Cost Unit Price for measurement activities applicable for the year concerned.

*HSBKu* : Special Cost Unit Price for Land inspection activities by committee A for the year concerned.

Legal basis :

Regulation of the Head of BPN No. 1 of 2010 concerning service standards and land regulations.

Time : 98 (Ninety eight) days.

Note : The application form contains:

- a) personal identity
- b) The area, location and use of the land requested.
- c) The land statement is not disputed.
- d) The land claim is physically controlled.

The proof of ownership basically consists of proof of ownership in the name of the right holder at the time the UUPA comes into effect and if the right is subsequently transferred, the evidence of successive transfer of rights reaches the right holder at the time the book of rights is recorded.

Meanwhile, the written evidence intended can be in the form of Grosse deed of *eigendom* rights issued based on the *Overschrijvings Ordonnantie* (S.1834-27) the relevant *eigendom* is converted into property rights.

- a. Grosse deed of *eigendom* rights issued under the *Overschrijvings Ordonnantie* (S. 1834-27) since the enactment of the UUPA until the date the land registration is carried out according to Government Regulation no. 10 of 1961 concerning Land Registration in the area concerned.
- b. Proof of ownership rights issued based on the relevant *Swapraja* Regulation.
- c. Certificate of property rights issued based on Agrarian Regulation No. 15 of 1959 concerning the Granting and Renewal of several land rights as well as guidelines regarding work procedures for the officials concerned.
- d. Decision letter on granting property rights from authorized officials, either before or since the enactment of the UUPA, which is not accompanied by an obligation to register the rights granted, but is tired of fulfilling all the obligations mentioned in it.
- e. A deed of transfer of rights made under the hand which is affixed with a testimony by the Customary Head/Village Head drawn up before the enactment of this Government Regulation.
- f. Deed of transfer of land rights made by PPAT (Notary), whose land has not been recorded
- g. The waqf agreement deed/waqf commitment letter made before or since the implementation of Government Regulation Number 28 of 1977 concerning the addition of the capital investment of the Republic of Indonesia into the share capital of a state-owned company (*Persero*).
- h. Minutes of auction made by an authorized auction official, whose land has not been recorded.
- i. Letter of appointment or purchase of land plots in lieu of land taken by the government or local government.
- j. The form of land tax / *Landrente*, girik, pipil, kekitir and Verponding Indonesia before the enactment of Government Regulation Number 10 of 1961 concerning Land Registration.
- k. Land history certificate ever made by the Land and Building Tax Service Office.
- l. Other forms of written evidence under any name as referred to in Articles II, VI and VII of the provisions for the conversion of the UUPA.

**B. Uses of Land Registration for Land Owners**

With the enactment of Government Regulation Number 24 of 1997 concerning Land Registration, it is hoped that it will be useful, both to the community and to the government itself. There are several uses obtained by the land registration system through Government Regulation Number 24 of 1997, namely:

1. For the community
  - a. With the new system, it will create a sense of security for land rights owners, because they will avoid feeling afraid of being sued. this is very important for the community and is a very vital need for every holder of land ownership rights. With the feeling of security from the owners of this land, they will work on the land in earnest. This will have a positive impact on soil productivity, where land production will be higher and the level of welfare of land owners or cultivators will also increase.
  - b. Help make it easier for the community to obtain property rights to land, because the procedure for obtaining property rights to land is no longer rigid, especially in the provision of evidence. This facility is made possible because of the provisions regarding the convenience of proving ownership rights to land, as illustrated in Article 7, Article 24. Article 7 allows village heads as PPATs in remote areas. Article 24 allows a person who does not have evidence at all regarding the land he controls, to register his land only based on land tenure in good faith for 20 years provided that during that time there are no parties who sue, or if a person does not have complete evidence. who can be trusted,
  - c. The community's economy is more advanced; this can happen, because in fact the certificate can be used as collateral for a loan in the bank. In this connection, for people who do not have the capital to do business, they can obtain business capital by making the certificate as bank collateral. Thus, it is possible that there will be more economic actors in the community, which in turn will have a positive impact on the possibility of better economic growth.
  - d. Facilitate the transfer of rights;  
With the certificate, the transfer of land rights will be easier to do, because it is enough to show the certificate to the National Land Agency along with other necessary conditions. The National Land Agency can effortlessly record and record the transfer of rights as soon as possible.
  - e. Increase land prices;  
Land that has been registered with certificates will usually have a higher selling value than those that are not certified. This is understandable because the buyer has confirmed the truth about the data on the land he wants to buy and already has legal certainty over the status of the land.
  - f. It is easier for the community to obtain data on land because of the possibility of using sophisticated tools. As explained earlier, in the new land registration system through Government Regulation Number 24 of 1997 it is possible to use sophisticated equipment (see Article 35 paragraph (5)).
2. Benefits for the government
  - a. The easier it is for people to register their land, it will lead to more requests from the community to register land rights. Thus, the government's efforts to register all land in each region of the country will be realized more quickly. In this regard, the ideals of the Basic Agrarian Law, which aims to create legal certainty and land rights, can be realized.
  - b. Reducing anxiety due to land disputes;  
Land that has been the target of the community often causes conflicts. Conflicts over land usually arise due to the lack of clarity about the real land owners. With the ease of obtaining proof of land ownership rights, it allows the community to be more motivated to register their

land.

- c. Makes it easier to set policies in the land sector, because land administration is more orderly.
- d. Profitable for banking institutions;  
Banking institutions often provide credit to the public by using land as collateral. The existence of a land certificate submitted as collateral by the borrowing community will increase confidence in the security of the money given to the community.
- e. Facilitate the government in determining policies in other fields such as taxation, because it is easier to collect tax data.

With the description above, it can be seen that the use of land registration for the community (land owners) and the government is carried out by carrying out land registration as regulated in Government Regulation Number 24 of 1997.

Thus, it does not provide a sense of justice for citizens who feel entitled and object to land disputes over the announcement of land registration because the time for the announcement of land registration is too short with the Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units and Land Registration. Announcement of Article 88 Systematic 15 days and Sporadic 30 days while Government Regulation No. 24 of 1997 concerning Land Registration Announcement of Article 23 Systematic 30 days and Sporadic 60 days and even then, with long announcements there are still many disputes that occur especially with announcements that are as short as that.

#### **4.3. The legal consequences of the amendment to Government Regulation Number 24 of 1997 concerning land registration with Government Regulation Number 21 of 2021 concerning management rights, land rights, apartment units, and land registration.**

Until now, the rules regarding land registration are still in conflict between the Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration and Government Regulation of the Republic of Indonesia Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration.

In Article 26 of the Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration it is explained that:

*"The list as referred to in Article 25 paragraph (2) along with a map of the relevant land parcel or parcels as referred to in Article 20 paragraph (1) shall be announced within 30 (thirty) days in systematic land registration or 60 (sixty) days in sporadic land registration to provide opportunities for interested parties to file objections."*

Furthermore, in Article 88 of Government Regulation of the Republic of Indonesia Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration, it is explained that:

- "(1) Announcement of the results of collecting physical data and juridical data:*
- a. in systematic land registration is carried out for 14 (fourteen) calendar days.*
  - b. in sporadic land registration for 30 (thirty) calendar days."*

With the issuance of government regulation number 18 of 2021 regarding management rights, land rights, apartment units, and land registration, this has led to a conflicting norm with government regulation number 24 of 1997 concerning land registration. Based on Government Regulation Number 24 of 1997, Land Registration Procedures include:

- a. Physical data collection and management
- b. Proof of rights and bookkeeping
- c. Certificate issuance
- d. Presentation of physical data and juridical data

- e. Storage of general lists and documents.

Meanwhile, the land registration procedure in government regulation number 18 of 2021 concerning management rights, land rights, apartment units, and land registration includes:

- a. The implementation and implementation of land registration can be done electronically
- b. The results of the implementation and implementation of electronic land registration as referred to in paragraph (1) are in the form of data, electronic information, and or electronic documents
- c. Electronic data and information and or their printouts are legal evidence
- d. Electronic data and information and or their printed results as referred to in paragraph (3) are extensions of valid evidence in accordance with the procedural law in force in Indonesia.
- e. The application of electronic land registration is carried out in stages by considering the readiness of the electronic system built by the ministry.

From the explanation above, there are differences in the implementation of land registration related to the announcement of land registration. The Government Regulation should be implemented properly, but in fact in the field the regulation still does not provide certainty whether it must be implemented within 60 days according to the provisions in Article 26 of Government Regulation Number 24 of 1997 or carried out for 30 days in accordance with the provisions in Article 88 of Government Regulation Number 18 of 2021.

As has been explained in several previous sub-chapters, the process of granting rights to an application for land rights does not only look at several procedures. Some applications are not enough to just be analyzed by whether the applicant meets the requirements, the application has been announced, physically examined, measured, and made a fatwa and so on and is procedural in nature, but must be studied in general.

Therefore, if the system adopted in the registration of land or rights as regulated in Government Regulation Number 10 of 1961 contains a negative setting (tends to be positive), in this case it provides an opportunity for those who feel more entitled and further prove that they are the owner of the land.

We can see that an application for land rights is legally appropriate for processing or not if the subject of the applicant can legally prove that he or she is the only party entitled to the land being applied for. The assessment of the evidence carried out by the agrarian implementing apparatus against the applicant is in terms of the history of land acquisition to the person concerned legally and can be accounted for.

There must be clear legal certainty regarding the legal consequences of the amendment to Government Regulation Number 24 of 1997 concerning land registration with Government Regulation Number 21 of 2021 concerning management rights, land rights, apartment units, and land registration, where legal certainty contains two meanings, namely first, the existence of general rules makes individuals aware of actions that may and may not be done, secondly in the form of legal security for individuals from government authority because with the existence of general rules individuals can know what the State may charge or do to individuals.

The teaching of legal certainty comes from dogmatic juridical teachings which are based on the positivist school of thought in the legal world, which tends to see law as something autonomous, independent, because for adherents of this thought, the purpose of law is nothing but guaranteeing the realization of legal certainty. This legal certainty is realized by law with its nature which only makes a general rule of law. The general nature of the rule of law proves that the law does not aim to achieve justice or benefit, but solely for certainty.

If the series of processes are not carried out according to the rules, the legal consequences that arise regarding the non-implementation of the installation of boundary markers or commonly referred to as the principle of *contradictoire delimitatie* are as follows:

1. It will cause land boundary disputes between one land owner and adjacent land owners due to

the absence of correct and clear boundaries.

2. It will lead to boundary disputes between the heirs of one right holder and another, in this case the owner of the adjacent land.
3. It takes a long time for the right holder or owner to return the land rights boundary in the future because of the unclear boundaries.
4. It will cause problems for rights holders if they want to make a sale and purchase because there is no clarity on the boundaries of the land.
5. There is no legal certainty of the land.

In dealing with or dealing with land disputes, the National Land Agency will make various efforts to guarantee a person's right to ownership of a plot of land. Normatively, the National Land Agency is the only institution in Indonesia that is given the authority to carry out the mandate and manage land. The basis for the formation of the National Land Agency, namely from Presidential Decree No. 26 of 1988 as an Operational Guide for the National Land Agency,

Even through the same process, the government has strengthened the role and position of the National Land Agency in forming Deputy V who specifically resolves and examines land disputes. Based on the regulation of the Head of the National Land Agency of the Republic of Indonesia Number 3 of 2006 concerning the Organization and Work Procedure of the National Land Agency of the Republic of Indonesia, the handling and assessment of land disputes and conflicts is the area of Deputy V which is in charge of the following:

1. Directorate of Land Conflict
2. Directorate of Land Disputes
3. Directorate of Land Cases Article 346 of the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 2006 concerning the Organization and Work Procedure of the National Land Agency of the Republic of Indonesia.

The National Land Agency will continue to seek solutions in dealing with land disputes based on the prevailing regulations by taking into account the sense of justice and respecting the rights and obligations of each party. The steps taken by the National Land Agency in resolving land disputes are through deliberation, as well as disputes regarding dual certificates. Currently, land disputes in terms of dual certificates can be resolved in several ways, namely:

Settlement by means of deliberation. Deliberation for consensus is stated in Pancasila as the basis of social life and is regulated in the 1945 Constitution. This deliberation is carried out outside the court without a mediator. The mediator is carried out by influential parties such as the Village Head/*Lurah*, customary leaders and the National Land Agency. In resolving land dispute cases through deliberation, that the disputed conflict is not in the form of determining the ownership of land rights which can give or eliminate a person's rights to the disputed land.

Using arbitration settlement and alternative dispute resolution Arbitration is a dispute resolution by a person or several judges who are appointed based on the agreement or agreement of the parties and it has been agreed that the decision made is binding or binding. The condition that must be used in the settlement of land disputes through arbitration is the agreement of the parties which is made in writing and approved by the disputing parties. If a contract has been written to resolve the dispute through arbitration and the other party wishes to settle the case through the courts, the court process must be postponed until the arbitration process is completed in the institution. Thus the court must respect and respect the institution of arbitration.

Settlement through judicial bodies In accordance with applicable regulations in the country, especially Indonesia, settlement of land disputes related to ownership disputes is submitted to the general court, disputes over decisions of the National Land Agency through the State Administrative Court and disputes relating to Waqf land are resolved through the Religious Courts. As has been explained by the litigation and non-litigation institutions that until now all these methods have not been able to completely resolve land disputes in a short time, but instead have become protracted.



And the mediation process carried out by the National Land Agency cannot solve the current land problems (Harianto, 2020).

Thus, it does not provide legal protection to the community who owns the actual land if it is registered by the new land owner without the knowledge of the actual land owner with the announcement of the land registration being too short, the real land owner feels disadvantaged by the announcement of the land registration being too short because land disputes.

#### **4. CONCLUSION**

The arrangement that is the legal basis that is still valid to Government Regulation No. 18 of 2021 on Land Rights Management Rights, Flat Units and Land Registration that is still being undertaken without not yet repealing Government Regulation No. 24 of 1997 on Land Registration whose announcement period differs between the two Government Regulations, namely, with the principle of *Lex Posterior Derogat Legi Priori* (The new Law). The old law, that is, if there is a law that regulates a thing replaced or renewed with a new law, then the old law no longer applies. Where in Government Regulation 24 of 1997 on Land Registration Article 25 paragraph (2) States, along with a map of the fields or plots of land concerned as a result of measurements as referred to in Article 20 paragraph (1) announced for 30 (thirty) days in the systematic registration of land or 60 (sixty) days in the sporadic registration of land to give an opportunity to interested parties to object, while Government Regulation No. 18 of 2021 on Land Rights Management Rights in article 88 states the Announcement of the results of the collection of physical data and juridical data; in the Systematic Registration of Land conducted for 14 (fourteen) calendar days; and in the sporadic Registration of Land for 30 (thirty) calendar days.

Furthermore, Fundamental differences in land registration procedures and procedures can be found through the National Land Agency Office which provides very clear information for people who do not understand the terms and procedures for land registration for the first time. Based on the provisions of Government Regulation 24 of 1997 concerning Land Registration, article 11 states that the implementation of land registration includes activities for registering land for the first time and maintaining land registration data, and in article 12 explaining that activities for registering land for the first time include: collecting and processing physical data, proving rights and bookkeeping, issuance of certificates, presentation of physical data and juridical data, storage of general lists and documents. Land registration data maintenance activities include: registration of changes to other land registration data, registration of maintenance and encumbrance of rights. However, in Government Regulation No. 18 of 2021 concerning Land Rights Management Rights, article 84 explains that the implementation of land registration can be done electronically and in article 86 the making of the deed of the Land Deed Maker Official can be done electronically. Moreover, there is an improvement in the practicality of the procedure.

Therefore, Legal Consequences regarding Amendment to Government Regulation Number 24 of 1997 concerning Land Registration to the community who own land, it must be given clarity so that the community feels safe when the community registers their land with the National Land Agency Office regarding the issue of different announcements due to the issuance of Government Regulation Number 18 of 2021 concerning, Management Rights, Land Rights, Flat Units and Land Registration. Where in the regulations, which must be based on clear legal certainty, that is, they must follow the new regulations as long as there are no other regulations that are more specifically regulated.

#### **Suggestion**

In order for the Government to make improvements or revisions related to registration announcements that are too short, the land owners actually feel disadvantaged and the Government must also conduct surveys or plunge into the field to find out what the people want.

The Office of the National Land Agency is to provide good services to the people who register their land and provide clear information to the community about the process and procedure for registering land.

Therefore, the community immediately takes care of registering their land at the National Land Agency Office so that they have a valid certificate of ownership of their land so as to obtain legal certainty and clear protection.

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