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## **The Concept of Arrangement of Land Tenure Rights Based on Land Certificates**

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### **ABSTRACT**

Arrangement of land tenure rights is an important matter in property law to guarantee legal certainty and protect the rights of landowners. Land certificates are the main tool in setting land tenure rights, because they are legal evidence of ownership and rights attached to land.

This abstract discusses the concept of regulating land tenure rights based on land certificates. This concept covers several aspects, including the importance of land certificates as legal proof of ownership, the land registration process, the rights listed in the land certificates, and the legal protection given to landowners. This study uses a descriptive-analytical method by collecting data from literature and laws and regulations related to regulation of land tenure rights. The results of this study are expected to provide a better understanding of the concept of regulating land tenure rights based on land certificates and the importance of legal certainty in property transactions.

Legal protection is given to landowners to protect their rights. If there is a dispute or violation of the rights stated in the land certificate, the land owner can file a lawsuit with the court to obtain restoration of rights or compensation. In addition, the government also has an important role in protecting the rights of landowners through supervision and law enforcement related to land tenure.

Keywords: Arrangement of land tenure rights, land certificates, legal certainty, rights of landowners, legal protection.

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### **Background**

The registration of land rights, in particular, is borne by the government based on Article 19 paragraph (1) of the UUPA which aims to guarantee legal certainty. Through the elucidation of the UUPA, the implementation of land registration activities is an obligation of the Government aimed at guaranteeing legal certainty that is *rechtscadaster* in nature. *Rechtscadaster* means for the purposes of land registration only and only disputes what rights are and who owns them, not for other purposes such as taxation. Land registration besides functioning to protect holders of land rights, also functions to find out the status of rights to land parcels, who owns them, what rights they have, how wide they are, what they are used for and so on.

Land registration arrangements in their development have presented or created ambiguity as the planting of written proof of ownership of formerly owned land. Some laws and regulations name it as proof of ownership. Others consider it not proof of ownership but only evidence of guidance, namely evidence indicating an ownership relationship. As evidence of instructions, its validity must be accompanied or supported by other evidence. However, at the same time, there are laws and regulations that stipulate that what is referred to as proof of ownership is one of the 12 written proofs. Meanwhile, a statement letter signed by the village head/*lurah* and/or sub-district head is only evidence of guidance. The use of terminology is increasingly congested and confusing with the use of basic terms of mastery. Legislation defines the basis of control as any evidence issued by an authorized official.

Regarding what evidence is referred to as proof of ownership and what is called evidence of instructions, distinguishing the basis of mastery from proof of ownership or evidence of instructions. Is the basis for mastery only mentioning evidence issued by an authorized official such as the BPN. If so, proof of ownership of a certificate issued by an authorized authority such as the village head/*lurah* becomes a new problem with the status of the land rights themselves. Land with proof of ownership can be categorized as land that is directly controlled by the state (state land), and land that is not directly controlled by the state (rights land).

Land registration in Indonesia is carried out by the National Land Agency

(BPN), which was legalized by Law Number 10 of 2006. As the agency in charge and authorized to register land in Indonesia, BPN has the task of managing data that contains a list of land parcels that have been registered.

Land cases are conflicts of interest in the field of land between who and whom, as a concrete example between individuals and individuals, individuals and legal entities, legal entities and legal entities and so on. The term land conflict is often also referred to as offenses in the field of land which are

broadly divided into two, namely land conflicts regulated in criminal law and land conflicts regulated outside the codification of criminal law, especially those related to land legislation.

All the statutory provisions above, the owner of land rights can obtain legal certainty regarding the certificates they own. However, from this there are also problems such as the existence of multiple certificates owned by different people and other problems related to land. This problem often occurs repeatedly and does not get legal certainty. On the other hand, the government has provided all access that can be made by holders of land rights in trouble through available courts. However, in several cases, landowners who have obtained legal certificates issued by related institutions such as the BPN have lost or have not received their rights.

The problem of multiple certificates is still the biggest problem for BPN. Bearing in mind that land rights holders will be greatly disadvantaged if there are such problems. On the other hand, BPN as an authority that can issue certificates deserves extra attention with the existence of multiple certificates owned by different rights owners.

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## Identification of problems

1. How is the concept of setting rights over land tenure based on land certificates?
2. What are the obstacles faced when carrying out land registration?

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## Research methods

This research is normative juridical law research. Normative juridical is an approach that uses a positivist legislature concept, which states that law is identical to written norms made and promulgated by authorized institutions or officials. This legal research is legal research that places law as a building system of norms. The system in question is managing the principles, norms, rules of law, court decisions, agreements and doctrines (teachings).

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## Discussion

These land rights originate from state control rights granted to individuals and groups of people collectively, as well as legal entities whose designation is only for the surface of the earth, but the BAL also allows for the use of land on the body of the earth, water and space on it in accordance with the purpose. grant of rights. If the use of the underground space and/or space above the ground is by the same subject as the holder of land rights and becomes part of the utilization of land rights, then the status is still placed as part of the land rights. If the utilization of the space above the earth's surface or the space below the earth's surface is different from the utilization of land rights by either the same or different subjects, then the existence of the status of space utilization above or below the ground cannot be placed as part of land rights. If the subject rights are the same, then the authority of the land rights holder cannot extend to control over the use of the space above the ground or the space below the ground.

Utilization of space above and below the earth must pay attention to the provisions of Article 4 paragraph (2) UUPA, spatial planning, environment, and aspects of benefits. Utilization of space above or below the ground has no relation to land rights if the subject of the beneficiary and the utilization activities are different. For this reason, apart from having to obtain a permit from the owner of the land rights above or below it, there must also be a separate right, namely the use rights of the basement or the use rights of space over land. The use of space above ground and below ground results in different utilization arrangements by different subjects, namely the use of above ground space, land use, and use of underground space. On that basis, the use of space above and below the ground by different subjects with land rights must meet the following requirements.

- 1) Their utilization does not cause interference with one another;
- 2) the utilization of space below or above the ground is not directly related to the utilization of the surface of the earth or its land;
- 3) not disturbing environmental sustainability; And
- 4) does not conflict with spatial and regional planning.

In addition to these requirements, the use of space above and below the ground must meet cumulative requirements such as administrative requirements including land rights and licensing aspects. Utilization of space above the ground and space below the ground is given by the Government to individuals and legal entities.

In analyzing the use of space above and below the ground by different subjects with land rights, it is important to understand that a just and efficient land system must consider the interests of various parties and accommodate complex needs. By ensuring that the requirements listed above are met, governments and communities can work together to create systems that are fair, sustainable and inclusive.

These requirements aim to create a balance between the use of space above and below the ground with the interests of society and the environment. By ensuring that utilization does not interfere with each other, environmental sustainability is maintained, and these activities do not conflict with spatial and regional planning, the government can control potential conflicts and safeguard the long-term interests of society and the environment.

It is also important to emphasize that administrative requirements, including land rights and licensing aspects, must be met. This will help prevent illegal practices and ensure that the use of space above and below the ground is carried out in accordance with existing laws and regulations.

Based on this, it needs to be recognized that the regulation of land tenure rights based on land certificates and the use of space above and below the ground is an important step in creating a land system that is fair, efficient and transparent. Despite facing various challenges, the efforts of the government and society in implementing this concept will continue to achieve the expected goals. Effective implementation will create a conducive environment for economic growth and sustainable development, as well as promote equity and prosperity for all of society.

The elimination of the domain principle after the UUPA came into effect was replaced by giving place to the principle of "the right to control from the state." This principle is adopted and developed from the provisions of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which in the UUPA is placed in Article 2 with the following formula:

- "(1) On the basis of the provisions in Article 33 paragraph (3) of the 1945 Constitution and the matters referred to in this article, the earth, water and space, including the natural wealth contained therein, are controlled by the state at the highest level as organization of the power of all the people.
- (2) The right to control from the state referred to in paragraph (1) of this article gives authority to:
- a. regulate and administer the allotment, use, supply, and maintenance of the earth, water, and space;
  - b. determine and regulate the legal relations between people and the earth, water, and space;
  - c. determine and regulate legal relations between people and legal actions concerning the earth, water and space.
- (3) The authority originating from the state's right to control referred to in paragraph (2) of this article is used to achieve the greatest possible prosperity for the people, in the sense of happiness, prosperity and independence in society and the legal state of Indonesia which is independent, sovereign, just and prosperous. .
- (4) The above-mentioned state control rights can be delegated to autonomous regions and customary law communities, only necessary and not contrary to national interests, according to the provisions of Government Regulations."

The elimination of the domain principle after the UUPA came into force was replaced by giving place to the principle of "the right to control from the state". This principle is adopted and developed from the provisions of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which is placed in Article 2 of the UUPA. land, water and space.

This principle emphasizes that the state as an organization of power for all the people has the authority to regulate and administer the utilization of natural resources, determine the legal relationship between people and land, water and space, and determine the legal relationship between people and legal actions. of land, water and space. The purpose of implementing the right to control from this state is to achieve the greatest possible prosperity for the people, which includes happiness, prosperity and independence in an independent, sovereign, just and prosperous society and legal state of Indonesia.

In practice, this right to control from the state can be delegated to autonomous regions and customary law communities, as long as it is necessary and does not conflict with national interests, according to the provisions of Government Regulations. This shows that the government seeks to accommodate the interests of the regions and customary law communities in the management of natural resources, including land, water and space, in line with the objectives of the state's control rights.

Determination of the right to control from the state is very different from the domain principle that was in effect before the existence of the BAL. The very basic difference is that on the domain principle, although it is not stated explicitly, the aim is to benefit Dutch colonialism. This can be studied from the colonial government's claim on land that could not be proven as eigendom rights by citizens as no man's land and declared as domain or state property. The principle of the Right to Control the State clearly states that the goal is for the greatest prosperity of the people. It can also be said that the UUPA provides an attitude to achieve the objectives of Article 33 paragraph (3) of the 1945 Constitution which is not in place, if the state acts as the owner of the land. According to the explanation of the UUPA, the state as an organization of power for all the people is indeed not the owner, but acts as a ruling body which at the highest level controls the earth, water, space, and the natural wealth contained therein. It is more appropriate if the state as an organization of power for all the people (nation) acts as a ruler who is given the authority to exercise authority at the highest level, as stated in Article 2 paragraph (2) of the UUPA.

This Provision on the Right to Control the State, when viewed from the Explanatory Memorandum of the UUPA number II/2, concludes that the rationale used regarding the legal relationship between the state and earth, water and space is a relationship in which the state is regarded as the personification of all the people, as stated by Notonagoro. Notonagoro formulated, one form of this relationship, namely the relationship between the state directly with the earth and so on not as individual subjects, and not in its position as a state that owns, but as a state that is the personification of the whole people, so that in this conception the state is inseparable from the people, the state is only the founder, supporter of the people's units.

The Right to Control the State is not inherently inherent in the state as the organization of the power of all the people. The authority of the right to control the State is given by the people who are united as the Indonesian nation so that it is carried out to realize the greatest goal of people's prosperity. In practice, this authority is delegated to regions and customary law communities as the implementation of the medebewind principle. Based on the provisions of Article 2 paragraph (2) of the UUPA, the meaning of mastering is "managing" and "organizing" which the Constitutional Court through its decision gives firmness to the scope of the meaning of "mastering" namely making policies, regulating, administering, managing and supervising . This

authority relates to: (a) the use/appointment (use), reservation, and maintenance of earth, water, space, and natural resources in the territory of the Unitary State of the Republic of Indonesia (NKRI); (b) determination and regulation of types of land rights; (c) determination and regulation of legal relations between people and/or legal entities that own land. This authority must be aimed at efforts to achieve maximum people's prosperity. The right to control of this country is the right of the people at the state level.

An example of a case related to land registration is the land dispute that occurred in Bekasi City. In 2019, there was a dispute between the housing developer and residents regarding the ownership of the land where the housing is being built. This dispute stems from differences in interpretation regarding the status of the land, where the housing developer claims to have the right to the land through a land certificate (SKT), while residents who previously worked on the land claim to have rights to the land through a land certificate issued by the Agency. National Land Agency (BPN).

In the aspect of justice, the land dispute shows an imbalance in granting equal rights to every individual or legal entity to register their land. This can be seen from the different interpretations regarding the status of land owned by housing developers and residents who previously worked on the land. In this case, efforts are needed to improve justice in the application of law and settlement of land disputes by providing equal access for all parties involved.

In the aspect of benefit, the land dispute shows that the use of land resources is still not optimal and often creates conflict and injustice in land tenure and use. This can be detrimental to society in general, especially in the context of development that is not in accordance with the needs and interests of the community. Therefore, policies are needed that can promote more effective and efficient use of land resources, as well as provide maximum benefits for the community.

In the aspect of legal certainty, the land dispute shows a deficiency in providing legal certainty for the community regarding land rights, especially in terms of differences between SKT and land certificates issued by BPN. This shows the importance of implementing Law no. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land and Law no. 5 of 1960 concerning Basic Agrarian Regulations to ensure that the existing land registration system in Indonesia can provide clear and accurate legal certainty for the community.

In this regard, the land dispute in Bekasi City indicates a problem in implementing an effective and efficient land registration system. Therefore, efforts are needed to continuously improve the quality and effectiveness of the land registration system in order to achieve the desired legal objectives and provide maximum benefits to the community.

In an effort to overcome these problems, there are several solutions that can be done to improve justice, benefits, and legal certainty related to land registration, including:

1. Improving the quality of the land registration system: It is necessary to improve the quality of the land registration system to ensure that every land right can be registered clearly and accurately. This can be done by increasing the capacity and service quality of the National Land Agency (BPN) in providing land registration services as well as improving technology and digitalization in the land registration process.
2. Fair and transparent settlement of land disputes: Fair and transparent resolution of land disputes is necessary to ensure that land rights are properly registered and no injustice is inflicted on the affected communities. This can be done by increasing the capacity and quality of land dispute resolution institutions, such as the Agrarian Court or the Indonesian National Arbitration Board (BANI).
3. Effective and efficient implementation of regulations: There is a need for effective and efficient implementation of regulations in land registration, such as Law no. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land and Law no. 5 of 1960 concerning Basic Agrarian Regulations. This can be done by increasing understanding and consistent and fair law enforcement against any violations in land registration.
4. Increased community participation in land registration: There is a need to increase community participation in land registration to ensure that all land rights are properly registered and that there is no injustice to the affected communities. This can be done by increasing understanding and access to adequate information for the community regarding land registration and increasing community participation in the land registration process.

Based on this, the problem of land disputes in Indonesia requires comprehensive and sustainable efforts to improve the quality of the land registration system, fair and transparent resolution of land disputes, implementation of effective and efficient regulations, and increasing public participation in land registration. Through these efforts, it is hoped that the land registration system in Indonesia can provide clear and accurate legal certainty for the community and encourage more effective and efficient use of land resources to provide maximum benefits for the community.

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## Conclusion

The relationship between Indonesian people and the land within Indonesian territory has a specific character. Specific relationships not only show spiritual bonds that are determined by long historical factors but also contain economic, political and social dependencies. Economic dependence because land in Indonesian territory is a source of livelihood for Indonesian people. Politically, land in Indonesia is the place, location, and boundaries of the Indonesian people's territory. Socially, land in Indonesian territory is an arena where relations between Indonesian people themselves take place.

This relationship which contains specific characters is the basis for the birth of legal relations between Indonesian people and land which is then conceptualized as the Rights of the Nation. Article 1 paragraph (2) of the UUPA emphasizes that the earth, water and space as well as natural resources in the territory of Indonesia belong to the people who are united in the ties of the Indonesian nation. The rights of the nation are sacred, eternal and fundamental. It is sacred because of the awareness and acknowledgment that land and its contents are a gift from God Almighty. It is eternal because the relationship between the nation and the land in Indonesian territory will never end as long as the Indonesian people as subjects and land as objects still

exist. Fundamental because the rights of the nation are the basis for the birth of basic rights for every person or group to control, utilize and enjoy land and its results for their welfare.

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