

Legal Strength of Village Head Certificate As a Basis for Land Ownership Rights

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KEYWORDS	ABSTRACT
Land Certificate by the Village Head	Law Number 5 of 1960 concerning the Basic Agrarian Law (UUPA) in Article 19 mandates the implementation of land registration with the aim of providing legal certainty and protection. The research method used is normative juridical with an analytical approach, with a descriptive analytical specification. Normatively (das-sollen), the provisions regulated in the legislation always state that the purpose of land registration is to achieve legal certainty through the issuance of certificates. Empirically (das-sein), the reality in practice shows that land conflicts are cross-sectoral issues, where each sector has its own rules that overlap with one another. This correlates with differences in perceptions and relations between the parties involved in the agrarian conflict itself. The research findings show that the court's decision in resolving land conflicts with evidence of Village Certificates / Land Certificates is as follows: In practice, it turns out that obtaining a certificate is not as easy as the ideal condition it should be. Constraints such as distance from the administrative center, untidy and overlapping records, difficulties in field verification facilities, and various other obstacles make obtaining a certificate not a simple task. Village Certificates (SKD)/Land Certificates (SKT) are factually easier to obtain because they only require the authority of the village and records available at the village head's office. SKD/SKT is actually a supporting document and not a primary document, but in court, this document can serve as valid evidence of land ownership rights, replacing the primary certificate due to the significant role of the judge.

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Introduction

The Law on Basic Regulations on Agrarian Principles Number 5 of 1960 (UUPA) in Article 19 has observed the procurement of land registration which will be further regulated by Government Regulation, with the aim of providing certainty and legal protection for land rights holders (Per.Pem No. 24 of 1997). The legal basis for the Village

Certificate (SKD/SKT) as evidence of instructions is regulated in Article 97 of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Sususun House Units and Land Registration, as follows: Land certificates, compensation certificates, village certificates, and others of the same kind intended as information on the control and ownership of land issued by the head of the village/lurah/sub-district can only be used as an indication in the context of Land Registration.

Normatively (*das-sollen*) the provisions regulated in laws and regulations always state that the purpose of land registration is to achieve legal certainty by issuing certificates. Legal certainty is an ideal goal because land certificates are the highest sign and proof of land (or land) control among supporting documents for land registration which are often pragmatically used as evidence of land control and ownership such as the Village Certificate which is a letter explaining land tenure issued by the Village Head.

Empirically (*das-sein*) the reality in practice in the field is the fact that land conflicts are cross-sectoral, where each sector has its own rules that overlap with each other, this correlates with differences in perceptions and relationships between the parties involved in the agrarian conflict itself. For example, juridically, formal evidence of land rights is the most important thing for financiers, while for rural indigenous communities or customary law communities, evidence of physical control over land plots is the most important thing (Sumardjono, 2018), because it can be understood that the government prioritizes data collection and land registration programs whose estuaries can economically become capital for state development. Not only for the sake of economic development but also the welfare of the nation which protects the control and ownership of land by the people.

This research will reflect the Village Certificate which in practice is often used as a document to prove the validity of controlling and owning land when the certificate is not owned or the certificate is doubtful. The researcher will see how the judicial institution behaves towards the Village Certificate or often referred to as SKD or also known in some areas as the Land Certificate or SKT or in some areas outside Java known as the Customary Land Certificate or SKTA.

A certificate from the Village Head can be found in several places in Indonesia. The enactment of Government Regulation Number 24 of 1997 concerning Land Registration further emphasizes the role of the Certificate document made by the Village Head or Village Head. The need for SKD/SKT documents as a component of juridical data in land registration activities is emphasized, especially for land whose rights have not been registered. In PP 24 of 1997, the applicant for the right to land registration will use SKD/SKT to prove the ownership and utilization of the land. Evidence of land tenure and utilization is very significant as juridical data. Without evidence of land ownership and use from the applicant, at the investigation stage the applicant cannot prove his legal relationship with the land, so that a certificate of proof of rights proving land rights on behalf of the applicant cannot be issued.

The existence of SKD/SKT in land registration does not stand alone but is side by side with other documents and other activities in land registration. Land registration must be seen as an effort to formalize the status of land so that it can be used as capital in a formal economic system (Soto, 2013). SKD/SKT is used for land registration and the Land Office accepts it. Land parcel maps can be obtained, one of which is because of the existence of SKD/SKT in addition to meeting other conditions. This means that land registration carried out by applicants who have SKD/SKT on land can be accepted and

processed by the Land Office. The conflict arose when it turned out that several SKDs/SKTs had been issued on the land. As an object of research, this SKD/SKT document is important because it is not just a document issued by the Village but this document has become a document of evidence of land ownership and utilization that is recognized and accepted as juridical data in land registration activities.

According to Sumardjono (2018), land conflicts often arise due to the lack of clear land ownership evidence, where documents such as Village Certificates (SKD/SKT) play a crucial role in resolving disputes, even though they are not primary land ownership certificates. This highlights the importance of non-formal documents in the judicial process, where courts accept them as valid evidence in land disputes. Similarly, Sujadi (2022) discusses the role of the Village Head's Certificate as a social and legal tool in land registration, emphasizing that these certificates are recognized for their social legitimacy, even though they lack formal legal standing in land ownership verification.

The urgency of this research is tied to the ongoing land disputes in Indonesia, where the Village Head's Certificate (SKD/SKT) is often used as a substitute for formal land certificates in court disputes. These certificates, while helpful in some contexts, highlight the broader issue of land registration and the inadequacy of land ownership documentation in rural areas. As land disputes continue to escalate, it is critical to understand the legal implications of using such documents in the judicial process to ensure fair and just outcomes. Additionally, resolving this issue is vital for supporting economic activities that depend on land rights, such as agriculture and development projects.

While existing research has explored the use of Village Certificates in land disputes, few studies have focused on the legal implications and challenges surrounding the use of these documents in formal land registration processes. Most studies concentrate on urban or formally registered land, leaving a gap in understanding the practical and legal issues regarding rural and customary land rights, particularly in cases where Village Certificates are used as primary evidence in land disputes.

This study provides a novel approach by examining the legal strength of Village Head Certificates (SKD/SKT) as a basis for land ownership rights, specifically focusing on their use in land dispute resolutions. The research sheds light on the complex legal and social dimensions of these certificates, which are often used despite not meeting the formal requirements for land ownership. The novelty lies in analyzing how judicial decisions impact the legitimacy of these documents in land ownership cases, offering new insights into the legal framework of land disputes in Indonesia.

The primary objective of this research is to explore the legal strength of Village Head Certificates as evidence of land ownership and their role in resolving land conflicts in Indonesia. The study aims to assess how these certificates are perceived and used by the judiciary and to propose recommendations for improving land registration practices. The benefits of this research are twofold: it contributes to the academic understanding of land ownership documentation in Indonesia and provides practical recommendations for legal reforms in land registration systems. This will help reduce land conflicts and enhance legal certainty, ultimately supporting the economic development and social justice related to land ownership.

Research Methods

This type of research is normative juridical more dominant descriptive analytical (Soekanto, 2014) with a legislative approach (Efendi & Ibrahim, 2018), a conceptual approach, a case approach (Marzuki, 2010), and a comparative legal approach (Eberle, 2011). The research data is sourced from primary and secondary legal materials (Ali 2009), namely the 1945 Constitution, the Basic Agrarian Law. Law No. 5 of 1960. LN No. 104 of 1960. TLN No. 2043, Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Dairy Housing Units and Land Registration and other relevant regulations. The data obtained through literature studies are reviewed and analyzed based on qualitative methods.

Results and Discussions

Aspects of the Legal Benefits of the Existence of Village Certificates / Land Certificates

Practically the Village Head Certificate has a fairly important role in terms of proving land ownership rights, even though the law states that the certificate is the main valid proof of land ownership. The Village Head's Certificate is never intended to replace the status of the certificate because the purpose of its existence is only as a complementary document in land registration activities (as juridical data). In fact, in practice, the Village Head's Certificate is able to be a valid proof of land ownership rights in place of the main certificate because of the considerable role of the judge.

This study does not confirm the quantity of cases, but in the reality on the ground, that there are many people who file lawsuits to the Civil, Criminal Court or PTUN using SKD/SKT, even though the legal landowner already has a certificate. In fact, this kind of case is accepted by the judge, and many are even won by the judge concerned. This phenomenon must be realized and acknowledged to occur, besides that it is a fact that many judges in Indonesia have such a view and it must be understood that every judge's decision is a form of legal discovery. Various judges' decisions related to this matter must be taken into account, because the judge's decision is a legal finding that is also a legal fact.

The practical dimension of the existence of SKD / SKT has a meaning or hint that when something that is normatively determined as the first and main priority of proving land ownership and ownership does not exist, then other evidence that can be accepted as evidence is used. In this case, when the land certificate does not exist due to administrative constraints or any obstacles that make the certificate absent, then other documents that accompany or become a requirement in the acquisition of the land certificate are used. In this case, human rational choice applies. From the existing documents, SKD/SKT is the most possible because SKD/SKT is issued by the Village Head who practically knows the real condition of the land concerned and the Village Head is a formal and official state position, with this consideration SKD/SKT is used.

Radbruch's theory (Radbruch, 1950) about the purpose of law is so clear, if we follow Radbruch's line of thought, then what must be sought first is the benefit for society at large. Radbruch said that the law that is actually positive has a context of being, namely the community that has needs that must be met. Laws, once promulgated positively, must be acceptable and provide benefits to society. Understanding legality and legitimacy is important. The two concepts that flow from the researcher's reflection on Radbrich's thinking are important to elaborate because they complement the theory of the purpose of the formation of the law which is used to analyze various judicial decisions that are used

as the object of the researcher. After seeing a brief and clear overview of the three judicial systems and the decisions they produce, it is increasingly clear what the position of SKD/SKT is in our judicial system. This is related to how the letters are viewed in terms of their legality or legitimacy.

Based on a study of the decision (Documentation Center for the 2022 Supreme Court Decision), it shows that SKD/SKT has been used by many interested parties to prove their control over the land. Ownership of SKD/SKT makes interested parties have legality and at the same time legitimacy of the land. This power is quite recognized in many decisions from the judicial sphere, it is proven that a number of decisions can be won because of the ownership of SKD/SKT. In another ruling, if the user of the SKD/SKT right base is not won in the dispute, then the problem is not only in the legality aspect, but also in the legitimacy aspect. In such a case, the SKD/SKT is not able to be sufficient evidence to show the owner's rights to the disputed land. The legality aspect represented by the existence of SKD/SKT is not enough, but there must be another aspect, namely the legitimacy aspect. The SKD/SKT document owned must be legitimized to be an affirmation of the disputed land rights.

To strengthen the argument regarding the existence of SKD/SKT, the author will provide a review of the Principle of Delimitation Contradiction. The Principle of Delimitation Contradiction (Hidayat, 2023) is a principle that explains the process of soil measurement. Basically, the principle of Contradiction of Delimitation is the presence of the parties concerned, namely the applicant for land registration and the parties directly adjacent to the time of measurement and mapping of land boundaries carried out by the Land Office. Further explanation of the principle is; Before the measurement process begins, it must first be ensured that in each corner of the land plot to be measured, a marker or boundary mark has been installed. Land parcel owners have the obligation to install and maintain boundary signs as stated in Article 17 of Government Regulation Number 24 of 1997 concerning Land Registration. The obligation to install and maintain boundary signs is intended to avoid disputes or disputes over land boundaries with the owners of adjacent land plots in the future. The determination of the boundary is carried out by the landowners and the landowners who border the Contardictator.

The principle of contradiction of delimitation can be proven by signing a Statement Letter by the landowner and the landowners bordering from the north, east, south, west and by the Head of Village/Kelurahan. At the same time, this contradiction is also agreed on in the List of Contents provided by the Land Office, these two written evidences are a condition for submitting a measurement or determination of the boundary of the land plot to the Land Office and, the Land Office will not accept the application for measurement if the boundary marker installed does not meet the principle of contradiction, such as a stake made of iron pipes/paralon pipes/wood/concrete monuments/or walls.

In Articles 14 to 19 of Government Regulation Number 24 of 1997, it is stated that in order to provide certainty and legal protection to rights holders, the legal certainty of the object must be determined in advance through the determination of the boundaries of the land plot. The determination of physical data on land plots is regulated in Article 17 of Government Regulation Number 24 of 1997 and is also based on the agreement of the parties. If there is no agreement on the land boundary in the measurement, then the surveyor will apply black ink in the form of a dotted line and can be changed if an agreement has been reached within a certain period of time (Munawar, 2023).

If the principle of contradiction has been fulfilled and an agreement has been reached from the owners of the bordering land, then the next process is the measurement

stage carried out by the surveying officer from the Land Office, and if at the time of installation of the boundary sign a measurement is required, then the measurement is not carried out by the surveying officer from the Land Office but by the owner of the land plot itself. All data on the size of the location of the land parcel boundary recorded in the field outlined in the Survey Drawing must be kept properly at the Land Office as long as the land parcel still exists. The data can be used in the future to reconstruct the location of the land parcel boundary if it has been lost. The landowner and the owner of the bordering land who have been present to witness the measurement must sign the Survey Drawing by making a statement that the boundary mark at the time of measurement or determination of the boundary has not changed as in the previous contradictory statement. The principle of Delimitation Contradiction is made as the initial stage in the measurement process, so every owner of a land plot must first install markers or signs of his land boundary in accordance with the approval of the parties directly bordering, namely the west, north, east, and south. These boundary signs must meet the requirements and in accordance with Article 21 of the Regulation of the Minister of Agrarian Affairs of the Republic of Indonesia Number 3 of 1997, concerning land boundary signs that: "boundary signs are installed at every corner of the land boundary, if deemed necessary by the officer who carries out the measurement also at a certain point along the boundary line of the land plot". (Mahmudi Kelana, 2022)

The provisions are then explained in detail in Article 22 regarding the land boundary for a certain plot of land. With the fulfillment of the boundary signs as mentioned above and have been placed in the actual place, the next stage is the measurement process. Then the Land Office will show the area of the boundaries and the location of the land as it should be and make a map and calculate the area of the land in accordance with the actual situation in the field. Situation Drawing/Survey Letter which was then used part of the land certificate. After the installation of boundary signs, the applicant and the bordering party will hold a deliberation to then determine the land boundary in front of the local village officials. After the determination of boundary signs and the installation of boundary signs/stakes, then the applicant and the bordering party will make a certificate of approval for the determination of boundaries. Furthermore, the applicant submits a measurement application to the Land Office by attaching a certificate of approval for the determination of the boundary. Based on this application, the Head of the Land Registration Section acting on behalf of the Head of the City Land Office ordered the surveying officer to carry out the measurement of the land object requested (Kusuma, 2022).

If the owners of the bordering land (neighbors) do not reach an agreement with the actual location of a boundary, even though mediation has been carried out, then the determination of the boundary is forced to be handed over to the court. If the dispute concerned is submitted to the Court and the Court issues a decision that has permanent legal force regarding the land in question which is equipped with a minutes of execution or if peace is reached between the parties before the announcement period, the record regarding the provisional limits on the list of entries and survey drawings shall be deleted by crossing out with black ink.

Basically, the application of the principle of Delimitation Contradiction in the process of complete systematic land registration as much as possible is carried out as stated in Article 18 of Government Regulation Number 24 of 1997, as follows: First, the determination of the boundary of a land plot that already has a right that has not been registered or that has been registered but there is no survey letter or picture of the situation

or a survey letter/picture of the existing situation is no longer in accordance with the actual situation, carried out by the Adjudication Committee in land registration sporadically, based on the designation of boundaries by the land rights holders concerned and as far as possible approved by the border land rights holders. Second, the determination of the boundaries of the land plot to be granted with new rights is carried out in accordance with the provisions as intended in paragraph (1) or upon the appointment of the authorized agency. Third, in determining the boundaries of the land plots, the Adjudication Committee or the Head of the Land Office pays attention to the boundaries of the plots or plots of land that have been registered and the survey letter or drawings of the situation concerned. Fourth, the consent as referred to in paragraphs (1) and (2) is stated in a minutes signed by those who give consent. Fifth, the form of the minutes as referred to in paragraph (4) is determined by the Minister.

Based on the reading of Article 18 of Government Regulation No. 24 of 1997 and also Article 20 of PMNA No. 3 of 1997 above, it is very clear that the application of the principle of Delimitation Contradiction in land registration is carried out as much as possible, because with the implementation of the implementation of the principle of Delimitation Contradiction in complete systematic land registration, it can avoid the occurrence of a dispute or problem regarding land boundaries.

Use of Village Certificate / Land Certificate as a Legal Purpose Step

The use of SKD/SKT documents is a rational step chosen by interested parties because of the unavailability of official documents that should be owned for land control and ownership, namely land certificates. This action is in accordance with rational choice theory (Eriksson, 2011) which views that humans will act in existing rational choices. This step is seen as a rational step related to the need for proof when the main evidence cannot be obtained. The SKD/SKT document is one of the instruments for land owners so that the land they own is legally recognized. The landowner must carry out the land registration process so that the land owned can be legally recognized. This process is a form of formalization of land so that the land gets legitimacy that leads to the legality of land ownership. In the Great Dictionary of the Indonesian Language (KBBI), the formal meaning is in accordance with legal regulations, it can also mean according to applicable customs. So it can be concluded that formalization or formalization means making something that was previously informal, formal or legal in accordance with applicable regulations or in accordance with applicable customs.

Land formalization can also be said to be a form of control over land that is formalized in the form of a document (Handayani, 2019). The SKD/SKT document is a formalization instrument before land ownership is completely legal because a land certificate has been issued. The issuance of land certificates makes land an asset that can be taken into account. Land is narrated as a guarantee for the owner if it goes through the formalization process, (Putra & Suryono, 2020) for example, land can be a guarantee for debts in banks. Then land can also be used as a fairly profitable investment tool because the selling value is quite high and relatively stable. This clearly shows that land formalization is indeed synonymous with capitalization. (Sutawijaya, 2004).

A legal norm must meet the criteria that should be and also how it is implemented. Legal norms that meet legality and legitimacy, in the sense of being accepted and recognized, are very likely to be implemented because thus legal norms are indeed already in effect philosophically, juridically and sociologically. A legal norm will be effective among its supporting communities if the legality and legitimacy aspects are met. The law will be harmonious and in line if the tension between the two aspects of legality and

legitimacy is eliminated. In practice or at the practical level, the law must fulfill its legality aspects formally and be affirmed socio-politically by its supporters. The enactment of a norm framing land registration activities that is the object of this research has the context of the Indonesian state which has the basis of the state of Pancasila. (Aswandi & Roisah, 2019)

Land registration, which leads to the issuance of certificates, should pay attention to these two aspects, namely legality and legitimacy. The Land Registration System should be able to provide solutions so that citizens' rights are protected, especially rights in terms of ownership of land or land objects. Although in a number of land cases, SKD/SKT is one of the triggers for land disputes, (Decision of Tanjung Balai District Court, No. 12/Pdt.G/2014/PN Tjb) but SKD/SKT is not an illegal document used to control land. The SKD/SKT position is recognized as a land tenure mechanism accepted by the community and the courts. SKD/SKT can also be a tool that allows land use in mutual cooperation and fulfills social justice. Social justice in this context is that all get the same rights and get guarantees for their rights. The guarantee of these rights is in accordance with the basic philosophy of the state, namely Pancasila. To be clearer about the meaning of the state of law, the concept will be explained below. (McCawley, 1982).

The lengthy elaboration of the various values contained in Pancasila aims to explain that if the SKD/SKT in the land registration system is indeed presented in accordance with its function, then social justice for the entire Indonesian nation is very likely to be realized. SKD/SKT is a real medium to be able to practice social justice for the entire nation. If the value of Pancasila is correctly understood and implemented by all elements of the nation, including village officials and parties interested in land, then SKD/SKT has the potential to be a tool to be able to realize social justice in land registration activities.

Sujadi explained how to achieve the final goal, namely "social justice as the ultimate goal can be achieved if there is an order (legal order, democracy, deliberation-consensus) that is built from the spirit of unity. Unity can only be formed if citizens are aware and have their own human dignity. The dignity of humanity in each individual will be possessed after man is aware of himself and knows himself until finally knowing who his God is."

Social justice as the ultimate goal as stated by Sujadi (2022) is in line with the goals of Radbruch's version of law, namely certainty, justice and utility. Third, legal objectives can be captured in the dimension of legality, namely the positive and formal fulfillment of the existence of something, and the dimension of legitimacy, namely the socio-political recognition of the existence of something. The study of the verdict proves that the judiciary has ratified the fulfillment of the two dimensions in the SKD/SKT document in a practical manner. SKD/SKT documents are a rational choice for those who need land tenure documents. This can realize the security of land tenure created and land registration that is not too rigid but inclusive of administrative limitations.

The ignorance of the community and the inability to take care of land registration for the first time after the conversion of customary land rights into land rights that have just been listed in the UUPA, is the basis for not registering land. This proves the inability of the government to reach out and explain which legal regime is expressly enforced today. Most people still persist with an understanding of ownership rights or land control rights, which is different from the concept of land ownership rights contained in the UUPA. What is meant in this case, Indonesian people who still have proof of old rights think that the land that is directly controlled by them is completely theirs even though the

land is not fully owned by those who control it directly, it can be only people who use the land, therefore they must register the land first.

According to the National Land Law and Government Regulation 18 of 2021 and its provisions, there should be no longer evidence of old rights, even though the use of the old right base is the same as the legal act of transfer of rights, but even if Indonesian citizens use proof of old rights as evidence of land, the evidentiary power is still weak. Because it must be supported by other evidence, such as information from neighbors whose land intersects with the land used as an object, a certificate of proof of acquisition of proof of the old right from which it was obtained whether from inheritance or other transfer of rights. So that in terms of implications in terms of validity as a basis for evidence, rights cannot stand alone. (Dedi Sukmana, 2021)

If there is no other evidence other than proof of old rights, then its position is a sign of proof of the appointment of the right base. Based on the description of the previous data, currently the position of the old proof of rights according to PP 18 of 2021 is only a sign of proof of the appointment of land rights which can be used as the basis for the issuance of certificates. In connection with the provisions regarding land with customary property rights that are subject to the imposition of tax certificates as a taxpayer's sign, so that the community thinks that the old proof of rights is a strong indication of evidence, regarding the proof of rights to the status of land ownership. However, it must be supported by other letters such as written statements from the village. (Eko Warman, 2020)

Currently, Government Regulation Number 18 of 2021 has been enacted, explained in Article 96 Written evidence of used land owned by individuals must be registered within a maximum period of 5 (five) years from the enactment of this Government Regulation. Therefore, the written evidence of used land belonging to customary land is declared invalid and cannot be used as a means of proving land rights and only as an indication in the context of Land Registration and not as proof of ownership of rights, unlike land rights certificates. That the written evidence of the former customary land ownership has not yet been issued a certificate. The period of 5 (five) years is considered to be the period for completing Land Registration in all regions of the Republic of Indonesia. With the invalidity of written evidence of former customary land, it does not change the status of the land.

Conclusion

The conclusions in this study can be formulated by the author as follows: (1) The judge's decision in resolving land conflicts with evidence of Village Certificates / Land Certificates as follows; In practice, it turns out that obtaining a certificate is not as easy as the ideal conditions should be. Distance constraints with administrative centers, untidy and overlapping recording constraints, constraints on facilities for field verification and various other obstacles cause certificates to be not simple to obtain. SKD/SKT is factually easier to obtain because it only requires village authority and recording at the village head's office. SKD/SKT is actually a supporting document and not the main document, but in court this document is able to be a valid proof of land ownership rights in place of the main certificate because of the role of the judge is quite large. (2) The existence or existence of the Village Certificate / Land Certificate seen from the legal benefits and legal purposes are: that the SKD/SKT is issued by the village head who has the position of *primus inter pares*, namely the person who is most respected, trusted and considered to know the region and its citizens the most, so that socially the SKD/SKT has a legitimate weight. The SKD/SKT that it issued does not only have administrative weight but has

social legitimacy that is accepted by the village community. The normative context of the SKD/SKT is village rules, land registration rules and judicial institutions. In the regulation on SKD/SKT villages, this is an information document issued by the Village Head in order to carry out general administrative duties and functions, especially regarding land in his area. In the rules on SKD/SKT land registration, it is seen as a component of juridical data, namely a document proving the ownership and use of land in the first land registration activity. Based on the land registration model applied, the basis of land registration activities is carried out in the village.

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