

## Legal Protection For Land Certificate Owner Which Coordinate Point Is Different With Land Object

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**Abstract.** *Land as one of the agricultural sectors is an important factor for the people of Indonesia. Such is the importance of land for human life, so it is not surprising that every human being wants to own and control it. This desire to control often results in land problems and disputes in social life. The problems that will be examined in this research are: 1) How are the coordinates of the land object different from those listed on the certificate? 2) What is the legal protection for the certificate owner whose coordinates are different from those listed on the certificate? The method used in this research is empirical juridical, namely an approach based on applicable law and based on reality in practice. Based on the problems above, it is known that 1) The Head of the Land Office corrects the error by making a report on the correction, as stipulated in Article 41 paragraph (3) and (6) of the Agrarian Regulation/Head of BPN 3/1997, 2) Preventive legal protection, where legal subjects are given the opportunity to file objections or opinion, the aim is to prevent disputes from occurring.*

*Keywords: Certificate; Coordinate; Legal; Point; Protection.*

### 1. Introduction

Indonesia is an agrarian country, that land is the main factor in production as a source of people's welfare, land is also a very important natural resource because humans carry out activities such as industry, agriculture, and housing. Therefore, the problem in the field of land is very complex because it has a very important role in human life.

UUPA which is a positive land law that applies in Indonesia until now. In Indonesian positive law, the objectives of the LoGA itself as stated in the general explanation are<sup>1</sup>:

1. Laying the foundations for the preparation of a national agrarian law, which will be a tool to bring prosperity, happiness and justice to the state and the peasant people in the framework of a just and prosperous society;
2. Laying the foundations for unity and simplicity in land law;
3. Laying the foundations to provide legal certainty regarding land rights for the whole people.

Based on the main objectives of the UUPA above, various types of land rights can be given and owned by everyone, either individually or jointly with other people or legal entities. According to Article 16 of the UUPA, land rights that can be owned and granted to any person and/or legal entity are property rights, business rights, building rights, use rights and so on.

Property rights are hereditary, strongest and most complete rights that can be owned by people on land, with broad control authority for the owner to control, cultivate and own it with the limitations of the provisions of the social function of the ownership of the land.<sup>2</sup> Meanwhile, according to Article 20 of the UUPA, property rights are hereditary, strongest and fullest rights that people can have on land. Meanwhile, in Article 28 of the UUPA, the right to cultivate is the right to cultivate land which is directly controlled by the state for a certain period of time (sixty years at most), for agricultural (plantation), fishery or livestock companies and Article 35 of the BAL, the right to build is the right to establish and own a building on land that is not their own for a maximum period of 30 years.

The UUPA never mentions a land certificate, but as found in Article 19 paragraph (2) letter c there is a mention of "a certificate of proof of rights". In the everyday sense, this certificate of proof of rights is often interpreted as a certificate of land rights. Although the main function of land rights certificates is as evidence, they are not the only evidence of land rights. It is still possible to prove a person's land rights with other evidence, for example a registration deed issued by the village government where the land is located. Certificates as evidence are very

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<sup>1</sup> Deen, Thaufiq., Ong Argo Victoria & Sumain. (2018). *Public Notary Services In Malaysia*. *JURNAL AKTA*: Vol. 5, No. 4, 1017-1026. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/4135>, see to Ong Argo Victoria, Ade Riusma Ariyana, Devina Arifani. (2020). *Code of Ethics and Position of Notary in Indonesia*. *Sultan Agung Notary Law Review* 2 (4), 397-407, <http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/SANLaR/article/view/13536>

<sup>2</sup> Eko Yulian Isnur, (2012), *Tata Cara Mengurus Segala Macam Surat Rumah Dan Tanah*, Yogyakarta: Pustaka Yustisia, p.9.

important, for example in the case of transfer of rights and legal actions, the transfer of rights aims to transfer land rights to other parties (who meet the requirements as rights holders) in the form of: buying and selling land, exchanging,

The provisions in Article 19 paragraph (1) of the UUPA are provisions aimed at the government to carry out land registration throughout Indonesia which is also the legal basis for the implementation of land registration in order to obtain a certificate of proof of land rights that is valid as a strong evidence. To follow up on this matter, Government Regulation Number 24 of 1997 concerning Land Registration has been issued, as a refinement of the previous Government Regulation. The implementation of land registration in the community is the duty of the State which is carried out by the Government for the benefit of the people, in the context of granting the status of land rights in Indonesia<sup>3</sup>.

Land according to Article 4 paragraph (1) of the UUPA is "the surface of the earth that can be given to and owned by people either alone or together with other people and legal entities". Article 4 paragraph (2) of the LoGA confirms that the lands referred to in paragraph (1) give the authority to use the land in question only as necessary for direct interests related to the use of land within the boundaries according to the LoGA and higher regulations.<sup>4</sup>

In accordance with the mandate of Article 19 of the LoGA, every land must be registered at the local land office. With the land registration, a person can easily obtain information regarding a plot of land, such as what rights they have, how much land is located, whether they are encumbered with mortgage rights and most importantly, the land will receive a certificate as evidence of rights.

Land registration has an important meaning in providing legal certainty for the people of Indonesia as confirmed in Article 19 of the UUPA that the government holds land registrations that are *recht cadastre*<sup>13</sup> throughout the territory of the Republic of Indonesia. The legal act of land registration is related to a person's civil rights. Civil rights are human rights that we must uphold and respect by other human beings with the aim of creating peace in people's lives.

The role of the Ministry of ATR/BPN in Kendal Regency in carrying out land registration is very much needed starting from the application stage for land registration by parties entitled to the land or those under their control, an active

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<sup>3</sup> Chuasanga A., Ong Argo Victoria. (2019). *Legal Principles Under Criminal Law in Indonesia and Thailand*, Jurnal Daulat Hukum, Vol 2, No 1 (2019) <http://jurnal.unissula.ac.id/index.php/RH/article/view/4218> , see to Yaya Kareng, Ong Argo Victoria, R. Juli Moertiyono. (2019). How Notary's Service in Thailand. Sultan Agung Notary Law Review, 1 (1), 46-56, <http://jurnal.unissula.ac.id/index.php/SANLaR/article/view/4435>

<sup>4</sup> Ali Achmad Chomzah, (2002), *Hukum Pertanahan*, Jakarta: Prestasi Pustaka, p. 111.

role and thoroughness from the Ministry of ATR/BPN as the organizer of land registration is needed, which in its implementation is carried out by the office. Kendal Regency land. Various problems that arise such as the location of objects that are different from the coordinates listed on the certificate, land grabbing followed by the issuance of certificates by unauthorized parties are some of the land problems that often arise in the community related to land registration activities.

The number of land dispute cases in Kendal Regency, of course, attracts attention to cases where the problem is the location of the object is different from what is stated on the certificate, where when a land registration process has been carried out according to the procedure, of course there will be no problems. In the case of Certificate of Ownership Number 760 located in Winong Village, Ngampel District, Kendal Regency, there was a problem with the location of the land object that did not match what was stated on the certificate. This is known when the certificate owner is about to sell his land, before carrying out the transfer process, the buyer asks the seller to check the certificate at the Kendal Regency ATR/BPN. After checking, it turns out that the location does not match the original object.

## **2. Research Methods**

This study uses an empirical juridical research type, namely an approach based on applicable law and based on reality in practice.<sup>5</sup> The juridical aspect in this research is the regulations related to land certificates. The empirical factor is the implementation of these regulations in the practice of activities related to land certificates whose coordinates are different from those of land objects.

The data collection method used in this research is literature study and interviews, namely data collection by reading laws and regulations, official documents and literature that are closely related to the problems discussed based on secondary data and conducting interviews so that verbal interactions occur directly between the interviewer and the respondent.

## **3. Results and Discussion**

### **3.1. The Coordinates of Land Objects That Are Different From Those Listed On The Certificate**

Measurement of land parcels is carried out to determine geographical location, geometric shape, area, situation of land parcels for attachment of certificates, preparation of registration maps and in addition to obtaining data on land parcel

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<sup>5</sup>Soerjono Soekanto and Sri Mamuji, (2009), *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Jakarta: PT Raja Grafindo Persada, p. 26

sizes as an element of boundary reconstruction if for some reason the boundaries of the land parcels are lost, it can be reconstructed back to its original position according to the limits that have been set. Measurement of land parcels can be carried out by terrestrial, photogrammetric, or other methods.

a. Terrestrial

Measurement of land parcels by terrestrial method for systematic and sporadic land registration is direct measurement in the field by taking data in the form of angle and distance measurements. In principle, what is meant here is the angle and distance on a flat plane, so if there are things as a result of field conditions that will affect the implementation of getting measurements in a flat plane, it is done with correct data collection techniques. The measurement of land parcels using the terrestrial method can be carried out using several measurement methods, depending on which method is the most practical to use in relation to the field conditions encountered and also the need for measuring data that must be obtained.

b. Photogrammetric

Measurement of plots of land using the photogrammetric method for systematic and sporadic land registration is usually carried out for open areas (easy to identify). Tools and equipment used for measuring land parcels are:

- 1) Map photo scale 1: 2500 or scale 1: 1000.
- 2) Meter / tape measure, to measure the sides of the plot of land.
- 3) Prik needle, to mark the boundary point of the plot of land on the photo map.
- 4) Measurement Drawing Form
- 5) Stationery and so on.

The results of photogrammetric mapping which are usually used in field surveys for determining land parcels are:

1) Blow up aerial photo

Blow up aerial photography is a magnification of aerial photography with a scale approach. Blow up aerial photos describe the details of the field conditions from photo images. Aerial blow up photos are not maps. Blow up aerial photography is a magnification of aerial photography with a scale approach. Measurement of land parcels is carried out by means of terrestrial or digital plotting, while blow up is

only used as a sketch of the plot of land and to include data on measurements as a complement to the Measurement Drawings. The characteristics of blow up aerial photos are usually not equipped with map formats, legends and cartographic symbols. While there is only information about the time of shooting, namely on the edges.

## 2) Photo Map

A photo map is a map that depicts field details from photographic images at a certain scale. The photo map has gone through a photogrammetric mapping process, therefore the measurements on the photo map are correct, thus the details on the photo map that can be identified in the field have the correct position on the map. The measurement of land parcels using photo maps is by identifying the boundaries of the land parcels and measuring the sides of the land parcels in the field.

## 3) Line Map

A line map is a map that depicts field details with cartographic lines and symbols with a certain scale. The line map has gone through a photogrammetric mapping process, therefore the measurements on the line map are correct, so the details on the line map that can be identified in the field means that the position is correct on the map. The measurement of land parcels using a line map as a registration base map is to tie it to details that are easily identifiable in the field and on a line map or by tying it to the nearest technical base point if it is already available around the plot of land being measured.

Measurement of land parcels for systematic and sporadic land registration can also be carried out using other methods other than the terrestrial and photogrammetric methods, this is possible if the measurement technology and mapping of these methods have reached the accuracy of measuring the boundaries of land parcels in accordance with the accuracy of the two methods above, for example; satellite imagery, GPS measurements and so on. Of the three methods above, the basic principle of measuring land parcels in the context of carrying out land registration is that they must comply with the technical rules of measurement and mapping so that the plot of land being measured can be mapped and its location and boundaries can be identified on the map and its boundaries can be reconstructed in the field.

In accordance with Article 25 paragraph 1, all measurements of land parcels in principle must be carried out in the National Coordinate system by binding to the nearest National technical base point around the land parcel. This can be done if

the base point of the 3rd order or 4th order technical base point is already available around the plot of land. The work of sealing technical base points on a national basis is being carried out, therefore for areas where technical base points are not yet available, the implementation of land parcel measurements on systematic and sporadic land registrations can temporarily be carried out in a local coordinate system, where if the points technical basis in the area is already available must be transformed into the National Coordinate system.

- a. The coordinate system used in the measurement must match the mapping.
- b. It is mandatory to map land parcels into the existing registration base map, even though it is still in the local coordinate system.
- c. Registration base maps and engineering base points in the national coordinate system are ideal conditions for plotting land parcels.
- d. Consideration of the use of the coordinate system in the measurement of land parcels.

For the use of the National and Local coordinate systems, each plot of land that has been measured must immediately be mapped on the registration map, either on the registration map with the available map sheets because there are other land parcels that have been mapped beforehand or a new map sheet made with only the newly measured plot of land.

Land mapping carried out by the government with active participation is needed because data on land ownership involves many parties. In this process, it is also hoped that there will be an exchange of knowledge and experience between researchers/mapmakers and parties related to land assets, especially the Government as the land manager. The main requirements for land asset data/information are legal certainty, accuracy and accuracy of location, shape and size of assets and other attributes related to land – at least land value.

BPN has data on the location, shape, size and status of the land. The tax department of the Ministry of Finance has complete data and methods on asset valuation. If these two data/information can be combined in one integrated system, there is hope that land assets can be managed with these requirements. The government has that opportunity and is the gateway to make it happen. This indication can now be linked to competence and needs to be developed continuously so that the government can manage it as well as possible: effective, efficient, current, timely, accountable and able to maximize the use function and value of land. When land mapping is carried out, this expertise in the field of

geomatics which combines survey mapping and telematics is needed to support it in general.

### 3.2. Legal Protection for Land Certificate Owners whose coordinates are different from the land object

Based on Article 1 number 20 PP 24/1997 states that certificates are letters of proof of rights as referred to in Article 19 paragraph (2) letter c of the BAL for land rights, management rights, waqf land, property rights to flat units and mortgage rights, each of which each has been recorded in the relevant land book. The process of granting a certificate through registration is not just by looking at the procedure. An application for the issuance of a certificate is judged according to law to be suitable for processing, if the subject of the applicant can legally prove that he is the party entitled to the land he is applying for. So this is where the civil aspect is needed in an application for certificate issuance.<sup>6</sup>

The evidence given to the right holder is a certificate. The land certificate consists of a copy of the original land book and letter of measurement, sewn together and covered with a cover. The original land book is used for archives at the Land Registry Office, while a copy is given to the right holder. If there is a recording in the land book, the recording is always carried out together, both in the archives at the Land Registration Office and those on the copies in the hands of the right holders.<sup>7</sup>

Legal subjects as bearers of rights and obligations, whether individuals, legal entities, or positions, can take legal actions based on their abilities or authorities. This legal action is the birth of a legal relationship, where the interaction between legal subjects has legal consequences, so that the legal relationship between legal subjects runs harmoniously, balanced and fair. Law appears as a rule in regulating legal relations.<sup>8</sup>

The law as a regulator and protection if each legal subject gets their rights fairly and carries out their obligations in accordance with the applicable legal rules. The law governing the legal relationship between the government and citizens is state administrative law or civil law, depending on the nature and position of the government in carrying out the legal action. When the government takes legal action in its capacity as a representative of a legal entity, the action is regulated and subject to civil law, while when the government acts in its capacity as an official, the action is regulated and subject to state administrative law.

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<sup>6</sup> Ardiwilaga Roestandi, (1962), *Hukum Agraria Indonesia*, Bandung: N.V. Masa Baru, p.30.

<sup>7</sup>Ibid, p. 30

<sup>8</sup>Hutagalung, Arie Sukanti, (2012), *Pentingnya Pendaftaran Tanah di Indonesia*, Jakarta: Raih Asa Sukses, p. 23



In general, there are 3 (three) kinds of government actions, namely;<sup>9</sup>

1. Government actions in the field of making laws and regulations;
2. Government actions in issuing statutes, and;
3. Government actions in the civil sector.

Article 19 paragraph (2) letter c of the UUPA states that the registration of land rights referred to in paragraph (1) of this article includes the provision of valid proof of rights documents as a strong evidence. So the certificate in question acts as a strong piece of evidence, not an absolute piece of evidence, in the sense that as long as it cannot be proven otherwise, the physical data and juridical data contained therein must be accepted as true information. As a result of an unequivocal publication system, i.e. negative leads to positive, this situation is contrary to the objectives of land registration as regulated in the UUPA or Article 3 of PP 24/1997, namely;

1. To provide legal certainty and legal protection to holders of rights to a parcel of land, flats and other registered rights so that they can easily prove themselves as holders of the rights in question. For this reason, the right holder is given a certificate as proof;
2. 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;
3. For the implementation of orderly land administration.

For wrongful and negligent actions, resulting in the wrong certificate legal product regarding the coordinates of . Errors can be due to fraud (bedrog), misguidance (dwaling), or coercion (dwang), in making physical data recorded in the land book. If the act is carried out by state equipment / BPN, then the act can be categorized as "onrechtmatigedaad" or abuse of authority from State Administration officials. Errors in physical data in land registration will eliminate the element of legal certainty of land rights, so that people who are entitled to wrong information at the BPN are state equipment which consequently creates disorderly land administration.

In practice, civil liability is associated with intentional acts (dolus) or due to negligence (culpa). It is very necessary to prove the existence of an element of intent or negligence, for example regarding the creation of physical data in land registration. There is an error in land measurement, so the coordinates do not match what is written on the measuring letter and the reality on the ground.

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<sup>9</sup>Eko Prasetyo, (1987), *Kebijakan Publik Tidak Memihak Rakyat*, Yogyakarta: Pusham UII Bina Ilmu, p. 28.

Before taking land measurements in order to make a letter of measurement containing physical data of a plot of land, initially a registration base map is made, the boundaries of the plot of land are determined, then the measurement of the plot of land is carried out, so as to get the result of land area.

The legal protection used is preventive legal protection, where legal subjects are given the opportunity to submit objections or opinions, the aim is to prevent disputes from occurring.<sup>10</sup>As a result of the error, it can be sued with personal liability, because it relates to the functionalist approach or the approach to behavior of a person in Administrative Law. Personal liability with regard to maladministration in the use of authority and public services.<sup>11</sup>Civil liability can become personal liability if there is an element of maladministration. If a certificate is issued without following the procedures established by the state and then there is an error, then it is a personal responsibility, because it is not in accordance with the general principles of good governance, which are stated in Article 10 of Act No. 30 of 2014 concerning Government Administration.

#### 4. Conclusion

Article 25 paragraph 1 all measurements of land parcels in principle must be carried out in the National Coordinate system by binding to the nearest National technical base point around the land parcel. The work of sealing technical base points on a national basis is being carried out, therefore for areas where technical base points are not yet available, the implementation of land parcel measurements on systematic and sporadic land registrations can temporarily be carried out in a local coordinate system, where if the points technical basis in the area is already available must be transformed into the National Coordinate system. Legal protection for land certificate owners whose coordinates are different from the land object is preventive legal protection, where legal subjects are given the opportunity to submit objections or opinions, the purpose of which is to prevent disputes from occurring. As a result of the error, it can be sued with personal liability, because it relates to the functionalist approach or the approach to behavior of a person in Administrative Law.

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<sup>10</sup>Hadjon, M Philipus, (1987), *Perlindungan Hukum Bagi Rakyat Indonesia, Sebuah Studi Tentang Prinsip-prinsipnya, Penanganannya Oleh Pengadilan Dalam Lingkungan Peradilan Umum dan Pembentukan Peradilan Administrasi Negara*, Surabaya: Bina Ilmu, p. 25

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