

## **Legal Protection Of The Owner Of The Legal Consequences Of The Onset Of Overlap**

**Aditia Karsa Ginting<sup>1)\*</sup>, Tetti Samosir<sup>2)</sup>**

<sup>1,2)</sup> Prodi Magister Kenotariatan, Fakultas Hukum, Universitas Pancasila

\*Corresponding Author

Email: [aditiakarsa420@gmail.com](mailto:aditiakarsa420@gmail.com)

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### **Abstract**

*Credentia are issued to rights holders for the benefit of the rights holders, as clearly stipulated in Clause 30 Verse 1 and Clause 31 of the PPPT. Clause 32 Verse (1) retrieved the proof of land ownership is the Certificate. As long as the information contained in the certificate is correct and consistent with the measurements and land registry, the certificate is considered strong evidence. Clause 32 Verse 2 regulates that with regard to a plot of land, if a certificate is generated in the presence of an individual or legal entity and is achieved in good faith and with legitimate tenure over the land, then any other entity claiming ownership of the underlying land forfeits the legal right to pursue such claims if-within a time period of 5 (five) years from the time of certificate issuance, they have not filed a administrative objection in a written form to the entitled owner and tBPN or filed a dispute in court. The research method used is normative legal research. Normative legal research uses exemplary normative studies in the form of behavioural legislation, such as legislative review. Therefore, it focuses on the stockpile of laws, legal principles and doctrines, legal discovery in specific cases, legal theories, the degree of legal synchronisation, judicial comparisons, and legal historical studies. This Research utilises a case approach by assessing the relevant cases which have become final court decisions. Legal protection in the decision is in accordance with applicable Legislation, which are based on the provisions of agrarian law, namely Clause 19 UUPA and Clause 2 PPPT, 53 Verse 2 letter c Act Number 5 Year 1986 on Administrative Justice, and Clause 16 Act Number 4 Year 2004 on Judicial Power. Factors causing the overlap (overlapping) of certified land ownership is a change from a manual base map into a digital base map, at the time of transfer from the initial base map to a digital base map there are parts that are not entered/ lost, so that the BPN Medan city sees that the land has never been registered and other factors can also be caused by the presence of persons (land mafia) originating from the BPN itself and persons from outside the BPN to issue Rights on land objects that are also being processed certificates. So that when the certificate process is completed there are parties who are harmed by the emergence of two pedestal rights over the same object.*

**Keywords:** *Legal Protection, Overlap, Land Right*

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## **INTRODUCTION**

Large part of human's life, one of which depends on the existence and ownership of land. Land can be valued as a property that has a permanent nature and can be reserved for future life. There is even an opinion that states that land is a great investment for the provision of future property. Land registration in Indonesia is regulated in Government Provision Number 24 Year 1997 concerning land registration (hereinafter referred as PPPA). Clause 1 Verse (1) of this Government Provision defines Land's titling as "A series of activities carried out by the government on a continuous, harmonious and regular basis, including collecting, managing, recording, presenting and maintaining physical and normative data, including maps." As the population grows, the need for land will continue to increase. These needs sometimes cause conflicts of interest so that land problems become things that are often faced by the community. (Jimmy Joses Sembiring, 2010)

In this sense government has roles very important, where we know Indonesia known as Welfare State must do everything to prosper its people. The concept of welfare state is the idea that the state is responsible for its citizens, that is, with the welfare of its people through service, assistance, protection and Prevention of social problems. In addition, the consequence of the Country where they can interfere all people's interest, including but not limited to land affairs,

country like Indonesia referred as Welfare State (Angger Sigit Pramukti dan Erdha Widayanto, 2015)

Act Number 5 Year 1960 concerning Agrarian Law (hereinafter referred as UUPA) Clause 4 Verse (1) retrieved “Country has basic right to control as referred Clause 2, “provisions have been made regarding the rights that may be held by the community over the surface of the earth. These rights are granted to individuals, either individually or jointly with other persons and/or legal entities.”. In this sense, the rights to land granted to the subjects of Rights, namely persons or legal entities that are equated with persons, are civil rights to land. (Suardi, 2005)

Land rights are explicitly and separately stipulated in the law, accompanied by temporary rights as regulated in Clause 53. Land rights are retrieved UUPA Clause 16, namely: a. Proprietary; b. Utilising (HGU); c. Utilise Buildings (HGB); d. Leverage; e. Lease; f. Clearing Land; g. Gathering. In order to ensure legal certainty of the rights to the land, it is necessary to carry out land registration activities. The UUPA has set up a land registry that aims to provide guarantees of legal certainty. As the administrator of land registration, the government has an obligation to carry it out, including for rights holders. This provision is regulated in UUPA Clause 19. (Urip Santoso, 2010) Further provisions regarding land registration under Clause 19 UUPA are regulated by Government Provision Number 24 Year 1997 concerning Land Registration (hereinafter referred as PPPT), where this government Provision is a normative form for land registration implementation in the framework of land registration which aims to provide legal certainty in legal protection to land rights holders, with evidence produced at the end of the land registration process in the form. (Arie S. Hutagalung, 2005)

A positive-leaning negative publication system, which includes positive characteristics such as certificates that serve as strong but not absolute evidence of rights, is used by the UUPA. UUPA Clause 19 Verse (2) letter c, which specifies that "the provision of proof of rights that serves as strong evidence," makes this clear. The statement was later published in PPPT Clause 32 Verse (1) “As proof of the strongest holder of land rights, supported by physical and normative data, the rights holder is issued a certificate. As long as the data listed is accurate, the certificate has strong and binding legal force.” (Toga Abdian Martiananda, 2015)

Credential are issued to rights holders for the benefit of the rights holders, as clearly stipulated in Clause 30 Verse 1 and Clause 31 of the PPPT. Clause 32 Verse (1) retrieved the proof of land ownership is the Certificate. As long as the information contained in the certificate is correct and consistent with the measurements and land registry, the certificate is considered strong evidence. Clause 32 Verse 2 regulates that with regard to a plot of land, If a certificate is generated in the presence of an individual or legal entity and is achieved in good faith and with legitimate tenure over the land, then any other entity claiming ownership of the underlying land forfeits the legal right to pursue such claims if-within a time period of 5 (five) years from the time of certificate issuance, they have not filed a administrative objection in a written form to the entitled owner and tBPN or filed a dispute in court.

Land registration according to PPPT can be divided into two, namely systematic land registration procedures and sporadic land registration procedures, both land registration procedures are not much different. Systematic land registration procedure: the existence of a work plan, the formation of adjudication committee, making registration base map, delimitation of land plots, making registration base map, making land register, making measurement letter, collecting and researching juridical data, announcement of Juridical results and measurement results, ratification of research announcement of physical data and juridical data, book-keeping rights, and issuing certificates.

While the sporadic registration procedures are: sporadic registration of land carried out at the request of interested parties, making registration base maps, delimitation of land plots, measurement and mapping of land plots and making registration maps, making land lists, making measurement letters, proving new rights, proving old Rights, Announcement of research results

juridical data and measurement results, ratification of research results announcement of physical data and juridical data, bookkeeping of rights, and issuance of certificates. A statement letter signed by the landowner, the owner of the land next to it, and the head of the village or sub-district is proof of the principle of *Contradictoire Delimitatie*. These two written documents are necessary to apply for measurement or delimitation to the BPN. Simultaneously, this *Contradictoire Delimitatie* is also agreed in the list 201, which is available at the BPN.

Furthermore, if within a period 5 years from the date of issuance of the certificate, the Certifying Authority and the head of the BPN concerned do not receive written objections from any party claiming land tenure or certificate issuance, the claim regarding land tenure or certificate issuance cannot be filed with the court. This applies to certificates issued legally on behalf of a person or legal entity who acquired land in good faith and actually owns it. The application for cancellation of the issuance of a certificate issued by the Local BPN constitutes the objection referred to above. A lawsuit is filed with the court with an application for cancellation of the certificate. There are many cases of land ownership disputes, one of which is the case of overlapping land ownership.

There are many cases of land ownership disputes, one of which is a case of overlapping land ownership that occurred on Jalan H. Maksum, Neighbourhood Association 04, Community Association 03, Sawangan Baru Village, Sawangan District, Depok City, West Java Province, as indicated in the Depok Court Verdict Number 279/Pdt.G/2017/PN.Dpk, the Bandung High Court Verdict Numer 66/PDT/2019/PT. BDG, and the dispute continued to the Supreme Court with Court of Appeal Decision Number: 1623 K/Pdt/2020, as well as the Bandung Administrative Court with the Supreme Court Verdict Number: 38/G/2021/PTUN.BDG.

This background stems from the lawsuit filed by M. Saleh Sugandhi Sumanta as Plaintiff or Respondent or Cassation Respondent I and II, against Sesotyo Adhi Wnt as Defendant I or Appellant II or Cassation Petitioner II and PT. Karya Mitra Insani, represented in this case by Wibowo Sasongko as President Director of PT. Karya Mitra Insani as Defendant II or Appellant I or Appellant I. The subject matter of the lawsuit is the total area of 547 m<sup>2</sup> of land, which is part of the land owned by M. Saleh Sugandhi Sumanta that was seized and taken over by Sesotyo Adhi Wnt and PT. Karya Mitra Insani without permission from M. Saleh Sugandhi Sumanta.

The 547 m<sup>2</sup> plot of land was acquired by M. Saleh Sugandhi through a sale and purchase agreement with Saudara Kamaludin Bin Usin, based on Buy-Sale Acte Number: 195.3/405/1986 dated 31 May 1986, drawn up by Tjepy Supriana, BA, acting as Temporary Public Notary or Head of Sawangan Sub-District, Bogor Regency, West Java Province. The plaintiff clearly violated the provisions Act Number 9 Year 2004 about Amandement of Act Number 5 Year 1986 about Administrative Law Clause 53 Verse2 letter (a), Where the physical data of the Land Ownership Certificate Number: 00327 of Sawangan Baru Village is incorrect in acquiring land or transferring land rights and is not recorded in the land data administration system of the Ministry of Agrarian Affairs and Spatial Planning and the BPN, so that Land Ownership Certificate No. 00327 is a formal legal record and an administrative defect.

It is clear and explicit that the land in question has been surveyed, mapped and registered in the name of the Plaintiff at the Depok City BPN. The Defendant is the party responsible for and has conducted a land survey for the purpose of registering the land rights requested by the Plaintiff and issuing Freehold Certificate Number 01906/ Sawangan Baru in the name of the Plaintiff in accordance with the applicable provisions and procedures, including but not limited to the Defendant's obligation, in conducting land measurements for the purposes of registration and certification, to notify the holders of adjacent land rights in order to obtain accurate information and data on the status and location of the land requested for registration. By issuing the disputed Certificate of Ownership Number 00327/Sawangan, which resulted in the overlap of part or all of the Plaintiff's Certificate of Ownership Number 01906/Sawangan Baru, the Defendant has violated

or, at the very least, contravened the provisions of Clause 3, letter a, Clause 4(1), Clause 21(1), Clause 30(1), and Clause 31(1) of Government Provision No. 24 of 1997.

If it is true that Certificate of Ownership No. 00327/Sawangan Baru has been registered and recorded on the land registered by the Plaintiff, then the Defendant cannot further process the Plaintiff's land registration application by notifying the Plaintiff as the owner of the land adjacent to the land to be registered, then the overlapping of the land will certainly be avoided.

Research conducted by Rizky Heriansyah (2024) entitled Errors in the Issuance of Land Title Certificates by the Head of the Depok City Defence Office for the Same Land Object (Case Study Number 130/Pdt.G/2019/Pn.Dpk Jo. No. 56/Pdt.G/2014/Pn.Dpk) found that the issuance of certificates is an obligation BPN, and therefore, this obligation gives rise to liability for the performance of a legal act. The factors causing errors in the issuance of certificates are the juridical and physical data obtained from surveyors and the land inspection committee obtained in the base map at the Depok City Defense Office, as well as the data issued by the sub-district office as the basis for issuing certificates in the name of H. Errors made in the issuance of land title certificates for the same object give rise to liability and are also subject to legal protection for the disputing parties.

A similar study was conducted by Teressyavira Luvianti and Rasji (2023), 'Legal Protection for Landowners in Indonesia in Addressing Overlapping Land Ownership Conflicts', which highlights the complexities and challenges within the legal system. Using the UUPA as the foundational framework, the analysis involved an evaluation of the successes and weaknesses in the aspects of land registration, dispute resolution mechanisms, and the recognition of customary rights. High costs and the slow pace of the land registration process remain obstacles, though efforts to accelerate the process and improve transparency have been undertaken. Dispute resolution mechanisms, such as mediation, show progress, but challenges related to bureaucracy and accessibility remain. Recognition of customary rights needs to be strengthened to reduce the gap with positive law. Similar to the research by Putri Rani Margaret Sipahutar et al. (2026), a common issue in practice is the overlap of land titles, which leads to disputes and causes harm to landowners acting in good faith. This situation creates legal uncertainty and also results in the violation of landowners' rights. Therefore, effective legal protection is required to ensure certainty and justice for the aggrieved parties.

As demonstrated in the research conducted by Putri Rani Margaret Sipahutar et al. (2026), one of the common issues frequently encountered in practice is the overlapping of land certificates, which triggers disputes and causes harm to landowners acting in good faith. This situation creates legal uncertainty and also results in violations of landowners' rights. Therefore, effective legal protection is required to ensure legal certainty and justice for the aggrieved parties.

## RESEARCH METHODS

The research method used is normative legal research. Normative legal research uses exemplary normative studies in the form of behavioural legislation, such as legislative review. Therefore, it focuses on the stockpile of laws, legal principles and doctrines, legal discovery in specific cases, legal theories, the degree of legal synchronisation, judicial comparisons, and legal historical studies. This Research utilises a case approach by assessing the relevant cases which have become final court decisions. (Peter M. Marzuki, 2023)

This research is normative juridical, namely legal literature research conducted by examining literature or secondary data only. Therefore, the approaches used in this research are the legislation approach and case study. The main source of data in this study is library research conducted by searching for, collecting, and reviewing secondary data in the form of primary, secondary, and tertiary legal materials. This serves as the basis of knowledge and reference point

in conducting discussions through written data sources such as scientific books, laws and regulations, and official documents issued by the government. This research was conducted by collecting as much literature as possible related to the research object so that it could add material in analysing data and presenting research results. (Peter M. Marzuki, 2023)

## RESULTS AND DISCUSSION

Overlapping certificates are two or more certificates that overlap one another so that the overlapping part is a double certificate because part of the land is included in another certificate. Factors behind the emergence of overlapping certificates include: a. In the absence of a database of land plots both registered and unregistered, the lands registered at the BPN should be recorded and inscribed on the registration maps. So that if there is a registration submission, it can be seen that the land has been certified. b. The intentional existence of landowners to re-register certificates that actually exist, this is because the process is easier and less than making the transition of land rights. c. The negligence of the BPN apparatus in the implementation of measurements and placement of land plots is often due to lack of accuracy in misplacing the image or forgetting that it is not drawn on the registration map. d. There is not enough availability of land registration maps covering the entire district area, so many pictures of land plots are not mapped. e. Due to an error in the designation of the boundaries of the land plot at the time of measurement of the land plot. These errors often cause overlapping certificates.

The fact that there is in the community, the factor of lack of thoroughness of the adjudication committee in collecting physical data on the land applied for registration, often results in overlapping certificates. In addition, the lack of public knowledge about the procedure for making land certificates, so that it is used by village officials or Land Agency officials by falsifying the data needed in the framework of land registration. The basic laws and Provisions governing land have undergone significant development with the passage of time, reflecting the social and political dynamics in society. To ensure the certainty of rights and legal certainty over land, UUPA has outlined the necessity to carry out land registration throughout Indonesia. Based on the general explanation of UUPA, land tenure by the state does not mean ownership but covers the granting of authority to the state as the supreme power entity. This authority covers the Provision, Administration of land allotment, use, and maintenance, as well as the determination of legal relations and actions related to earth and water.

The provisions governing land-related based on UUPA Clause 16 Verse (1) states that there are various entitlement of land, which are: a. Ownership b. Use c. Building Usage d. Utilising; e. Lease; f. Clearing land; g. concoct; and h. Other entitlement not included in the above rights shall be stipulated by law, as well as temporary rights as referred in Clause 53.

In the context of land law, the basis of land law begins with understanding the legal basis that governs land in a jurisdiction. This includes laws, constitutions, local Provisions, and technical Provisions governing the rights and obligations of land voters, as well as the basis of land law: a. UUPA which aims to reduce the negative social, economic, political consequences of progress by placing social functions on property rights. PPPT is a manifesto stating that controlling and utilising land, water and air must be conducted in accordance with the fundamental principal of justice and wealth for the development of a just and well-being society. c. Agraria Basic Law Clause 16 Verse (1) states that there are a. Ownership b. Use c. Building Usage d. Utilising; e. Lease; f. Clearing land; g. concoct; d. UUPA Clause 19 Verse (2), namely land registration itself is a series of activities that include: a. Measurement, perpetuation, and land clearing b. Registration of land rights and transfer of such rights c. Evidence, which serves as a powerful tool of proof.

The right to land ownership refers to the right to maintain and treat claims to land as private property, in the context of land there can be ATB (intangible assets) because the right to land is recognized administratively but not legally or physically defined. In addition, there can also be overlapping certificates of title, which occur when two or more parties claim the same ownership of a property. This can be caused by several factors, such as administrative errors, changes in property boundaries that are not well documented, or it can also be due to changes in land ownership status. To solve the problem of overlapping certificates, it can be done by various mechanisms such as mediation, arbitration, and also legal proceedings.

Certificate of ownership and overlapping ownership can be caused by several main factors that cause conflict, among others: a. Errors in administration b. Changes in property C. Failure to verify ownership d. Changes in the legal status of property e. Breaking or regionalisation.

In conflict resolution overlapping land ownership involves several stages, namely the parties involved can try to resolve the conflict by deliberation to reach a mutual agreement. If these efforts are unsuccessful, the next step is to involve the BPN (hereinafter referred as BPN) or other institutions that have the authority to resolve land disputes. Although Provisions and procedures for resolving overlapping land ownership conflicts have been well regulated at the national level, problems usually arise at the implementation level. Provision that can be identified in several aspects, namely the first UUPA provides the legal basis for land rights, including customary rights which are legally carried out. Second, the government Provision (PP) and Province BPN further regulate the implementation of the UUPA such as land registration procedures, land data renewal, and land certificates.

The government, which is authorised to carry out land registration, must ensure legal certainty regarding land registration, including the entire registration process, based on the UUPA principles. UUPA Principles issued proof of rights are property rights, Business rights and building rights. UUPA principles does not mention explicitly, who the government agencies that hold land registration throughout the territory of the Republic of Indonesia and also does not mention what the name of the letter of proof of rights that apply as a powerful means of proof. Government Provision intended by UUPA Clause 19 Verse (1) trees is a PPPT. In PPPT affirmed that government agencies that hold land registration is the Bureau of land registration, while the name of the certificate of Rights is a certificate.

Since July 8, 1997 declared invalid since the promulgation PPPT. PPPT affirmed that the government agency that organizes land registration throughout the territory of the Republic of Indonesia is the BPN, while the implementation of land registration is carried out by the head of the district or City BPN. The name of the certificate of proof of rights as the final product of land registration activities for the first time is a certificate.

There are several indicators to see the success rate of the government in realizing the orderly administration of land, among others: a. It is known who owns or controls a plot of land, the type of land use. b. What is the legal relationship between land plots with those who control land plots. c. How much is the area of a land plot owned by a person or legal entity. d. Where the location of the land that can be mapped based on a selected map projection system, so as to avoid overlapping certificates. e. The information mentioned in letters A, b, c and d above is managed in an adequate Land Information System. f. Storage of documents in an orderly, orderly and secure. g. There is a fixed procedure that is simple, fast but guaranteed accuracy.

The factors that cause overlap are studied from PPPT, namely there are provisions in Clause 12 which in practice are not implemented as follows: a. Land registration activities for the first time include: (1) collection and processing of physical data; (2) proof of rights and their books; (3) issuance of certificates; (4) presentation of physical data and juridical data; (5) storage of General lists and documents b. Land registration data maintenance activities include: (1)

registration of changes and imposition of rights; (2) registration of changes in other land registration data.

## CONCLUSION

Legal protection in the decision is in accordance with applicable Legislation, which are based on the provisions of agrarian law, namely Clause 19 UUPA and Clause 2 PPPT, 53 Verse 2 letter c Act Number 5 Year 1986 on Administrative Justice, and Clause 16 Act Number 4 Year 2004 on Judicial Power.

Factors causing the overlap (overlapping) of certified land ownership is a change from a manual base map into a digital base map, at the time of transfer from the initial base map to a digital base map there are parts that are not entered/ lost, so that the BPN Medan city sees that the land has never been registered and other factors can also be caused by the presence of persons (land mafia) originating from the BPN itself and persons from outside the BPN to issue Rights on land objects that are also being processed certificates. So that when the certificate process is completed there are parties who are harmed by the emergence of two pedestal rights over the same object.

## REFERENCES

- Harsono, Boedi. *Hukum Agraria Indonesia, Himpunan Peraturan-peraturan Hukum Tanah*. Jakarta: Djambatan, 1982.
- Hartono, Sunaryati. *Penelitian Hukum Indonesia Pada Akhir abad Ke 20*. Bandung: Alumni, 1994.
- Hermanses, R. *Pendaftaran Tanah di Indonesia*. Jakarta: Direktorat Jenderal Agraria, 1981.
- HS, Salim. *Penerapan Teori Hukum Pada Penelitian Tesis dan Disertasi*, Raja. Jakarta: Grafindo Perkasa, 2016.
- Hutagalung, S. Arie. *Tebaran Pemikiran seputar masalah Hukum Tanah*. Jakarta: Lembaga Pemberdayaan Hukum Indonesia, 2005.
- Lubis, Yamin Muhammad. *Beberapa Masalah Aktual Hukum Agraria*. Medan: Pustaka Bangsa Press, 2004.
- Marzuki, Muhammad Peter. *Penelitian Hukum*. Jakarta: Kencana, 2023.
- Mertokusumo, Sudikno. *Hukum dan Politik Agraria*, Universitas Terbuka. Jakarta: Karunika, 2008.
- Parlindungan, A.P. *Pendaftaran Tanah di Indonesia*. Bandung: Mandar Maju, 2000.
- Pramukti, Sigit Anggeri dan Widayanto Erdha. *Awas Jangan Membeli Tanah Sengketa*. Jakarta: Pustaka Yustisia, 2019
- Santoso, Urip. *Pendaftaran dan Peralihan Hak Atas Tanah*. Jakarta: Kencana Prenada Media Group, 2010.
- Siregar, Anshari Tampil. *Undang-undang Pokok Agraria dalam Bagan, Kelompok Study Hukum dan Masyarakat*. Medan: Fakultas Hukum USU, 2001.
- Sembiring, Joes Jimmy. *Panduan Mengurus sertifikat Tanah*. Jakarta: Transmedia Pustaka, 2010.
- Soekanto, Soerjono dan Mahmuji Sri. *Penelitian Hukum Normatif*. Jakarta: Raja Grafindo Persada, 2006.
- Soemardjono, Maria. *Puspita Seragkaian Aneka Masalah Hukum Agraria*. Yogyakarta: Andi Offset, 1982.
- Suardi. *Hukum Agraria*. Jakarta: Badan Penerbit Iblam, 2005.
- Subekti, R. dan Sudibyo, Tjitro R. *Kamus Hukum*. Jakarta: Pradnya Paramita, 1969