



**ANALYSIS OF THE IMPLEMENTATION OF
ARTICLE 22 PARAGRAPH (2) OF ATR/BPN
MINISTERIAL REGULATION NUMBER 6 OF 2018
ON COMPLETE SYSTEMATIC LAND
REGISTRATION (PTSL): LIMITATIONS AND
CHALLENGES IN RECORDING PROOF OF
COMMUNITY LAND OWNERSHIP**

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Abstract: The problem of incomplete or non-existent land ownership proof among the community has arisen in one of the villages in Sidoarjo Regency. This is rooted in the registration of land through the Comprehensive Systematic Land Registration (PTSL) program by one of the heirs named "A". After the issuance of the certificate, other heirs raised objections regarding land ownership, leading to an unresolved dispute until now. This situation is not in line with the intended purpose of land registration, given that Indonesia has comprehensive regulations governing land matters, including dispute resolution. The persistent delay in resolving the dispute raises questions about whether there is a regulatory mismatch or implementation issues within the PTSL program. This research adopts a socio-legal research method with a socio-legal sociology approach and legal data collection techniques such as interviews, observations, and document analysis conducted at the Sidoarjo Regency ATR/BPN Office. The ATR/BPN Office in Sidoarjo addresses these challenges by mediating disputes before PTSL registration to reach agreements. In cases where no consensus is reached, the registration process is postponed until a

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resolution is achieved between the parties. Additionally, in post-PTSL certificate issuance disputes, mediation is employed, and if no agreement is reached, the category may be downgraded from K2 to K1, or legal proceedings may be pursued to determine rightful ownership of the land parcel.

Keywords: Community, Land Disputes, Mediation.

INTRODUCTION

Indonesia is one of the agrarian countries where the majority of its population earns a living in the agricultural sector. The relationship between humans and land is inseparable because land ownership always follows certainty regarding the landowner's rights. The connection between humans and land is integral to the function of land ownership. Most daily activities of humans, including a significant portion after death, involve the use of land either as a final resting place or for cremation on the land itself.¹ Land serves a social function, meaning land ownership is not individual but collective, encompassing land, surrounding water sources, and plantation areas controlled by individuals or groups. Another function of land is economic, allowing for transactions such as land sales, gifts, and inheritance. Furthermore, Indonesia is a legal state where every activity within the country must be based on legal provisions. As mandated by the constitution in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as UUD 1945), which states: "every person has the right to recognition, guarantees, protection, and a fair legal certainty as well as equal treatment before the law." Providing fair legal certainty also includes ensuring legal certainty regarding land rights for the entire population.

Land also needs to be defined legally. In legal terms, the term "land" is defined by the agrarian law, as a concept officially delimited by the Agrarian Law (UUPA). The UUPA explains that the agrarian concept includes land, water, and natural resources contained therein. The legal

¹Soetiknjo Imam, *Politik Agraria Nasional* (Yogyakarta: Gajah Mada University Press, 1994).



definition, as outlined in Article 48 of the UUPA, even encompasses airspace – the space above land and water containing energy and elements that can be used for efforts to maintain and develop the fertility of land, water, and the natural resources contained therein, and other related matters. In this context, "land" refers to the soil throughout the territory of the Republic of Indonesia, which is a natural resource intended for the welfare of society. Hence, the connection between humans and land is indivisible, as human life is intricately tied to the land.² In the context of land arrangement related to use, control, and ownership, the registration of land rights is conducted to establish legal certainty, as explained in Article 19 Paragraph (1) of the Agrarian Law (UUPA): "To ensure legal certainty, the government conducts land registration throughout the territory of the Republic of Indonesia according to the provisions regulated by the government." This provision is directed towards the government to organize land registration across Indonesia. The holders of land rights have the right to register their respective lands to obtain a certificate of land rights as a strong proof of their entitlement.

The registration referred to in this provision involves recht cadaster land registration activities, including: (1) Land registration, mapping, and bookkeeping, (2). Registration of land rights and the transfer of rights, (3). Issuance of certificates of land rights. The purpose of land registration is stipulated in Article 3 of Government Regulation No. 24 of 1997 on Land Registration, which states:

- (a) To provide legal certainty and protection to the holders of rights over a land parcel, condominium units, and other registered rights, enabling them to easily prove their status as the rightful holders.
- (b) To provide information to interested parties, including the Government, facilitating easy access to necessary data for legal transactions concerning registered land parcels and condominium units.
- (c) To ensure the orderly administration of land.

² Erna Sri Wibawanti, *Hak Atas Tanah Dan Peralihannya* (Yogyakarta: Liberty, 2013).



One of the activities within land registration is the registration of land for the first time. The registration of land for the first time refers to the registration of land whose objects have not been previously registered based on Government Regulation No. 10 of 1961 on Land Registration and Government Regulation No. 24 of 1997 on Land Registration. This initial land registration activity is carried out through two methods: systematically and sporadically. Systematic land registration is an activity conducted simultaneously by the Government within the area or part of the area of a village or urban sub-district. In contrast, sporadic land registration is the initial registration activity concerning one or several land registration objects within the area or part of the area of a village/urban sub-district, either individually or collectively.

The Government has a program for the community, namely land certification conducted simultaneously to provide legal certainty for the people, known as the National Agrarian Operation Project (hereinafter referred to as PRONA). PRONA is explained in accordance with the Minister of Home Affairs Decree No. 189 of 1981 regarding the National Agrarian Operation Project. However, the current process of simultaneous land registration organized by the government is referred to as the Comprehensive Systematic Land Registration Program (hereinafter referred to as PTSL).³ The implementation of the Comprehensive Systematic Land Registration (PTSL) is a step taken by the Government to provide legal certainty and protection to the public in controlling a land parcel. PTSL, which began to be executed, differs from previous government programs such as the Land Administration Project (PAP), Land Management and Policy Development Project (LMPDP), or the Adjudication, Larasita, and National Agrarian Program (PRONA). PTSL is distinct from previous programs because the President monitors, evaluates, and even directly participates in distributing certificates to the community.⁴

³ Samun Ismaya, *Hukum Administrasi Pertanahan* (Yogyakarta: graha Ilmu, 2013).

⁴ Dian Aries Mujiburohman, "Potensi Permasalahan Pendaftaran Tanah Sistematis Lengkap (PTSL)," *BHUMI: Jurnal Agraria Dan Pertanahan* 4, no. 1 (2018): 88-101, <https://doi.org/https://doi.org/10.31292/jb.v4i1.217>.



PTSL is part of the Nawa Cita program of the Indonesian government during the era of President Ir. Joko Widodo, as mandated by Article 19 of the Agrarian Law (UUPA) and Government Regulation No. 24 of 1997 on Land Registration. PTSL is regulated in Article 1 number (2) of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Regulation No. 6 of 2018 concerning Comprehensive Systematic Land Registration, which states:

"Comprehensive Systematic Land Registration, hereinafter referred to as PTSL, is the initial land registration conducted simultaneously for all Land Registration objects throughout the territory of the Republic of Indonesia in one village/sub-district or other names at an equivalent level, which includes the collection of physical and juridical data regarding one or more Land Registration objects for registration purposes."

From the above explanation, it can be concluded that PTSL is the registration of all land parcels in a village or equivalent area. This method of land registration is considered to yield greater results in a relatively shorter time, as the process of collecting land registration data is done simultaneously for all land parcels within a village/sub-district, and the wider community is informed about the land registration. Therefore, objections from the community can be promptly known by the government.

In reality, the government appears to be in a hurry, especially considering the recent changes in regulations and implementation guidelines for the Comprehensive Systematic Land Registration (PTSL) program. It is noteworthy that the regulation governing PTSL has undergone changes four times. The changes occurred through the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Regulation No. 35 of 2016 on Accelerating the Implementation of Comprehensive Systematic Land Registration, which was amended by the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Regulation No. 1 of 2017, further perfected by Regulation No. 12 of 2017, and ultimately revised again with Regulation No. 6 of 2018 on Comprehensive Systematic Land Registration.



These changes reflect an immature strategy and concept in the PTSL program. Regulations are established and revised in a patchy manner. The involvement of various stakeholders and the numerous technical and "political" issues in the field have sparked discussions about these regulatory changes. The complexity is heightened by the fact that the regulations for PTSL are only established at the level of Ministerial Regulation. Meanwhile, several legal principles found in the regulation equivalent to Government Regulation No. 24 of 1997 on Land Registration "overlap" with the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Regulation that governs the acceleration of the PTSL program. One instance is based on Article 22 paragraph (2) of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Regulation No. 6 of 2018 on Comprehensive Systematic Land Registration, which states:

"In case the proof of land ownership by the community is incomplete or entirely absent, it can be completed and proven by a written statement about ownership and/or physical possession of the land area in good faith by the concerned party."

This can potentially lead to disputes in the implementation of land registration through PTSL, with issues such as disputes over data forgery, conflicts among heirs, and others concerning a land parcel. Additionally, the community may not fully understand the importance of land registration, and obstacles in the field may hinder the PTSL process. One of them is based on Article 22 paragraph (2) of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Regulation No. 6 of 2018 on Comprehensive Systematic Land Registration, which states:

"In the event that proof of community land ownership is incomplete or entirely absent, it can be completed and proven by a written statement about ownership and/or physical possession of the land area in good faith by the concerned party."



This provision can lead to disputes in the implementation of land registration through PTSL. In the research subject, disputes may arise regarding data forgery, conflicts among heirs, and other issues related to a specific land parcel. Additionally, the community may not fully understand the importance of land data registration, and there may be obstacles in the field hindering the PTSL process. Article 22 requires the existence of a written statement regarding physical possession of the land area and with good faith. The written statement of physical possession of the land must be witnessed by at least 2 (two) local residents who are not family-related and can be held accountable both in civil and criminal matters. If there are elements of falsehood in the statement later on, it is not the responsibility of the PTSL Adjudication Committee.

In essence, good faith is interpreted as honesty, honesty in the land acquisition by the rights holder, and honesty in fulfilling the specified requirements. In this case, it is challenging to identify good faith, as it has an abstract meaning that can result in various interpretations. Good faith in Article 22 is being honest in physically possessing the land and being truthful in meeting the specified requirements. The measure of having acted in good faith is determined by the PTSL Adjudication Committee based on an estimate within their judgment that the applicant has fulfilled the specified administrative requirements. So it is necessary to "Analyze the Implementation of Article 22 Paragraph (2) of the Minister of ATR/BPN Regulation Number 6 of 2018 on Complete Systematic Land Registration (PTSL): Limitations and Challenges in Recording Evidence of Community Land Ownership"

THEORETICAL BASIS

The theoretical framework is the framework of thought or points of view, research theories about a case or issue that serves as a basis for comparison or can be considered as theoretical guidance. The theoretical framework is the foundation of theories in constructing or strengthening the truth of the analyzed problem. The intended theoretical framework is



the framework of thought or theoretical opinions, the thesis as guidance, whether approved or not.⁵

(1) Theory of Proof. According to Sudikno Mertokusumo, the term "proving" is used to provide an understanding, as follows: (a) The term "proving" in a logical sense means providing absolute certainty because it applies to everyone and does not allow for other evidence. (b) The term "proving" in a conventional sense is proving that provides certainty, but it is not absolute certainty, rather relative certainty with various levels. The reason for using the theory of proof is to explain why the evidence of community land ownership is incomplete or entirely absent in Sidoarjo Regency.

(2) Public Policy Implementation Theory

According to Thomas R. Dye, public policy is whatever the government chooses to do or not to do. If the government chooses to do something, there is a purpose because public policy is a government "action." If the government chooses not to do something, it is also a public policy with its own purpose.⁶ The reason for using the theory of public policy implementation in this research is to analyze the extent to which the role of the six factors mentioned above in the implementation of Article 22 Paragraph 2 of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation No. 6 of 2018 on Comprehensive Systematic Land Registration (PTSL) regarding incomplete or entirely absent evidence of community land ownership in the Sidoarjo Regency ATR/BPN Office.

(3) Legal Effectiveness Theory

Referring to the legal effectiveness theory, as defined by Soerjono Soekanto, the effectiveness of legal implementation is determined by the level of community compliance with the law, including its law enforcers. Thus, there is an assumption that a high level of compliance is an indicator of the functioning of a legal system. The functioning of the law

⁵ M. Solly Lubis, *Filsafat Ilmu Dan Penelitian* (Bandung: Mandar Maju, 1994).

⁶ Sri Suwitri, "Konsep Dasar Kebijakan Publik," *Semarang: Badan Penerbit Universitas Diponegoro*, 2008.



is a sign that the law has achieved its legal goals, namely striving to uphold and protect society in social interactions.

According to Soerjono Soekanto, there are five conditions for the effectiveness of a legal system⁷, including: (a) Legal factors that develop in community life; (b) Facilities or supporting means for legal implementation; (c) Patterns of community life; (d) Influence of law enforcement officials; and (e) Evolving legal culture. The reason for using the legal effectiveness theory in this research is that it can be employed by the National Land Agency (BPN) in implementing the Comprehensive Systematic Land Registration (PTSL). This theory can help measure the extent of effectiveness in the implementation of PTSL, particularly in Sidoarjo Regency. By using the legal effectiveness theory, an evaluation and efforts to address incomplete or entirely absent evidence of community land ownership by ATR/BPN can be conducted to enhance the effectiveness of PTSL implementation.

RESEARCH METHODS

Research, in general, has various types or classifications, especially concerning the underlying discipline. In legal studies, there are two common types of research: normative legal research and socio-legal research. This thesis employs field research (socio-legal) due to the data obtained for the thesis proposal being collected by directly engaging with the field or the research object. According to Peter Mahmud Marzuki, the concept of socio-legal research is presented as "socio-legal research only considers the law as a social phenomenon. In this regard, the law is viewed only from its external aspects. Hence, in socio-legal research, the law is always associated with social issues. Such research focuses on the behavior of individuals or society in relation to the law."⁸ The approach used in empirical legal research differs from the approach used in normative legal research. In empirical legal research, the focus is on how the law operates

⁷ Soerjono Soekanto, *Efektivitas Hukum Dan Peranan Saksi* (Bandung: Remaja, 1988).

⁸ Peter Mahmud, *Penelitian Hukum* (Jakarta: Kencana Perdana Media group, 2005).



in society.⁹ The research approach employed is the sociology of law. The sociology of law approach analyzes how reactions and interactions occur when the normative system operates within society.

RESULTS AND DISCUSSION

The ATR/BPN Sidoarjo Regency is an agency under the Ministry of Agrarian and Spatial Planning/National Land Agency in Sidoarjo Regency, which directly reports to the Minister of Agrarian Affairs or the Head of the National Land Agency through the Head of the Regional Office of the National Land Agency for East Java Province. The ATR/BPN Sidoarjo Regency has the task of implementing several duties and functions as regulated by Presidential Regulation Number 48 of 2020 concerning the National Land Agency.

In carrying out its tasks, the ATR/BPN Sidoarjo Regency has the following functions:

- (a) Formulating and determining policies in the field of land affairs;
- (b) Formulating and implementing policies in the field of survey, measurement, and mapping;
- (c) Formulating and implementing policies in the field of land rights determination, land registration, and community empowerment;
- (d) Formulating and implementing policies in the field of regulation, planning, and control of land policies;
- (e) Formulating and implementing policies in the field of land acquisition;
- (f) Formulating and implementing policies in the field of control and settlement of land disputes and cases;
- (g) Supervising the implementation of tasks within the National Land Agency;
- (h) Coordinating tasks, conducting guidance, and providing administrative support to all organizational units within the National Land Agency;

⁹ Salim HS and Erlies Septiana Nurbani, *Penerapan Teori Hukum Pada Penelitian Tesis Dan Disertasi* (Jakarta: Raja Grafindo Persada, 2013).



- (i) Managing data on sustainable food agricultural land and information in the field of land affairs;
- (j) Conducting research and development in the field of land affairs; and
- (k) Developing human resources in the field of land affairs.

The functions of the National Land Agency have not undergone significant changes from the previous Presidential Regulation, namely Presidential Regulation Number 20 of 2015 concerning the National Land Agency, which also regulates the functions of the National Land Agency. However, it differs from Presidential Regulation Number 61 of 2013 concerning the National Land Agency, where Presidential Regulation Number 20 of 2015 concerning the National Land Agency was issued to streamline and reoptimize the National Land Agency as stipulated in Presidential Regulation Number 61 of 2013 concerning the National Land Agency of the Republic of Indonesia. Upon reviewing its functions, in Presidential Regulation Number 61 of 2013 concerning the National Land Agency of the Republic of Indonesia, the National Land Agency had 14 functions, which were later simplified to 11 functions in Presidential Regulation Number 20 of 2015 concerning the National Land Agency and Presidential Regulation Number 48 of 2020 concerning the National Land Agency, as outlined in the functions of the National Land Agency above.

Authority is an essential and fundamental aspect for any governmental body or official in carrying out their duties and functions. This is based on the general principles of public administration. In this regard, any governmental body or official performing its government functions, whether in the executive, legislative, or judiciary branches, must have authority or legal basis as stipulated in Article 8 paragraph (1) of Law Number 30 of 2014 concerning Government Administration. The governmental authority mentioned in Article 11 of the aforementioned law is derived from three types: attribution, delegation, and mandate.

Attribution authority, as stipulated in Article 11 paragraph (1) of Law Number 30 of 2014 concerning Government Administration, is a direct authority granted by the 1945 Constitution or laws and represents a new or previously nonexistent authority. Delegation, on the other hand, is the authority granted by one governmental body/official to another



governmental body/official, usually specified in Government Regulations, Presidential Regulations, and/or Regional Regulations. It is generally a delegation of authority from pre-existing authority. As for the mandate, it is the authority assigned by a higher governmental body/official and represents the execution of routine tasks. Furthermore, according to Article 18 paragraph (3) of the aforementioned law, a governmental body/official without authority over any decision or action it issues will be considered an act of arbitrariness. Such decisions or actions are deemed invalid even if they have been examined and possess a legally binding court decision. Hence, authority is an absolute requirement for every action or decision issued by a governmental body/official.

In the context of the National Land Agency (BPN), when reviewed based on the sources of authority, it falls under the category of delegated authority. This is rooted in the acceptance of authority from the higher governmental body/official, in this case, the President. This delegation of authority is documented in the form of a Presidential Regulation, namely Presidential Regulation Number 48 of 2020 concerning the National Land Agency. Article 3 letter g of this regulation specifies that the BPN has the task and function to formulate and implement policies in the field of handling and preventing land disputes and conflicts, as well as dealing with land cases.

The authority of the National Land Agency in handling land conflicts, disputes, and cases is detailed in Minister of Agrarian and Spatial Planning/National Land Agency Regulation Number 21 of 2020 concerning Dispute Handling and Resolution. In the considerations section of this regulation, it is outlined that BPN has the authority to participate in handling and resolving legal issues in the field of land, aligning with its function to provide legal certainty in land matters and ensure justice and welfare for the community. Additionally, the regulation explains the procedures for handling land disputes, including the subsequent steps for resolution, such as the cancellation of land certificates due to the issuance of duplicate certificates. This is further reinforced by Article 64 paragraph (3) of Law Number 30 of 2014 concerning Government Administration, which states that a government official/agency that issues a decision has the right to annul the decision or legal product it has issued.



The procedures for handling disputes, as stipulated in Article 6 paragraph (1) of Regulation of the Minister of Agrarian and Spatial Planning/National Land Agency Number 21 of 2020 concerning the Handling and Resolution of Land Cases, consist of the following stages: (a). Case assessment; (b). Preliminary hearing; (c). Investigation; (d). Presentation of research results; (e). Coordination meeting; (f). Final hearing; and (g). Case resolution. These stages of dispute resolution must be carried out sequentially, except in cases where the dispute or conflict is classified as minor or moderate. In such cases, not all stages need to be followed. Therefore, based on these regulations, the National Land Agency (BPN) has the authority in every effort to handle and prevent land cases, conflicts, disputes, and legal matters.

Implementation of Article 22 paragraph (2) of the Regulation of the Minister of Agrarian and Spatial Planning/National Land Agency Number 6 of 2018 Concerning Systematic Land Registration (PTSL) Related to Incomplete or Nonexistent Land Ownership Evidence of the Community

The initial land registration activity, known as the National Agrarian Operation Project (PRONA), was initiated in 1981 based on the Minister of Home Affairs Decision Number 189 of 1981 regarding the National Agrarian Operation Project. The goal of PRONA is to implement the National Development Outline and State Systematization in the field of land, particularly in providing certificates to the community who do not yet possess them. However, PRONA faced a drawback, as from 1981 to 2016, it succeeded in certifying only 44% of the land, leaving a deficit of 56% across Indonesia.¹⁰ Efforts to accelerate land registration through PRONA did not reach the target so it was initiated in 2015, a government program which also carried out land registration for the first time, namely Complete Systematic Land Registration (PTSL).

The implementation of the Systematic Land Registration (PTSL) is a step taken by the government to provide legal certainty and protection to

¹⁰ Ihsanuddin, "Jokowi: Prona Sudah 35 Tahun, Baru 44 Persen Tanah Warga Bersertifikat," Kompas.com, 2016, <https://nasional.kompas.com/read/2016/10/16/12474581/jokowi.prona.sudah.35.tahun.baru.44.persen.tanah.warga.bersertifikat>.



the community in controlling a piece of land. One of the regions in Indonesia participating in PTSL is Sidoarjo Regency. PTSL is a program offered by the Sidoarjo Regency National Land Agency (ATR/BPN) office to all villages within the regency. The regency is targeted to experience significant fluctuations, as indicated in the table above. Several villages participating in the PTSL program are located in Balongmacetan, Kramattemenggung, Prambon, Gedangrowo, Bulang, Gampang, Kedungsugo, Bendoretek, Jedongcangkring, Temu, Watutuklis, Kandangan, Porong, Kedungboto, Wunut, Kupang, Kalidawir, Putat, Ngaban, Boro, Kedensari, Ganggangpanjang, Karangtanjung, Kedungpeluk, Candi, Kedungkendo, Durungbanjar, Durunbedug, Jambangan, Wedoroklurak, Rangkahkidul, Blurukidul, Urangagung, Janti, Kebaron, Kenongo, Gelang, Tiasih, Modong, Sudimoro, and Grabagan.

Challenges and Efforts in Article 22 Paragraph (2) of the Regulation of the Minister of Agrarian and Spatial Planning/National Land Agency Number 6 of 2018 Concerning Systematic Land Registration (PTSL) Related to Incomplete or Nonexistent Land Ownership Evidence of the Community

Issues arise when land ownership evidence of the community is incomplete or entirely absent, allowing land proof through a statement of ownership based on good faith witnessed by 2 (two) non-blood relatives, such as neighbors or elders in the area where the land is located, according to Article 22 of the Regulation of the Minister of Agrarian and Spatial Planning/National Land Agency Number 6 of 2018 concerning PTSL. This situation leads to problems related to land ownership. A land dispute case concerning incomplete or entirely absent land ownership evidence occurred during the land registration process through the Comprehensive Systematic Land Registration (PTSL) program in the village of Wunut. In this case, "D" claimed that the land he occupied was his because he had been using it for more than 20 years, and there was a statement of ownership and witness acknowledgment from people around the land. However, "E" is the heir of "C" and the rightful owner of the land, supported by proof in letter C. In the 1990s, "C" leased the land to "D" for residential purposes. Shortly after, "C" passed away, and "E" only discovered this in 2019 when attempting to register for the PTSL program.



Other disputes often occur concerning inconsistencies in boundaries, size, and overlapping ownership related to incorrect references to the ownership certificate (letter C) compared to the actual situation. As a result, there is legal uncertainty between the rights to privately owned land and the rights of neighboring landowners. In another case, one of the heirs named "A" faced opposition from another heir regarding land ownership after the certificate was issued. The dispute resolution has not been concluded until now. This situation is not in line with the objectives of land registration, considering that in Indonesia, regulations already adequately address land matters, including the resolution of land disputes.

Efforts by the Sidoarjo Regency National Land Agency (ATR/BPN) in Overcoming Incomplete or Entirely Absent Land Ownership Evidence of the Community.

An exception to Government Regulation Number 24 of 1997 concerning Land Registration is applied in the implementation of PTSL, which does not use a deed of transfer in case of previous land ownership transfers. Government Regulation Number 24 of 1997 concerning Land Registration stipulates that any transfer of land rights must use a deed made by a PPAT (Land Deed Official). However, to expedite the process and administrative aspects of land registration in the PTSL program, it is replaced with a stamped written statement of land ownership made by the applicant.

When an applicant cannot provide proof of land transfer, either due to absence or incompleteness, it is replaced by creating a written statement of ownership and/or possession of the land in good faith, based on Article 22, paragraph 2 of the Regulation of the Minister of Agrarian and Spatial Planning/National Land Agency Number 6 of 2018 concerning PTSL. This statement is made by PTSL participants and witnessed by 2 (two) non-relative neighbors who are familiar with the land's history. In this case, participants must demonstrate good faith that can be held accountable in both civil and criminal aspects, serving as a benchmark for honesty that is difficult for the Adjudication Committee to identify directly. There must be self-awareness from each PTSL participant.

The statement does not have the same level of evidentiary strength as a deed created by a PPAT (Land Deed Official) since it is self-prepared



by PTSL participants based on a form provided by the PTSL Adjudication Committee and witnessed by 2 (two) persons. This statement is considered an underhand document with weak evidentiary power compared to an authentic deed. In the future, it may be challenged by others who can prove otherwise. The statement must declare that there are no objections from any party regarding the land ownership, it is not in dispute, not a government asset, and not land within a forest area.

The issues in Sidoarjo Regency result in PTSL products categorized into clusters K1, K2, K3, and K4. The provisions regarding clusters in PTSL are outlined in Article 25 of the Regulation of the Minister of Agrarian and Spatial Planning/National Land Agency Number 6 of 2018 concerning PTSL, stating: The completion of PTSL activities consists of 4 (four) clusters, namely:

- (a) Cluster 1, which includes land parcels where physical and juridical data meet the requirements for issuing a Land Certificate;
- (b) Cluster 2, which includes land parcels where physical and juridical data meet the requirements for issuing a Land Certificate but are subject to court cases and/or disputes;
- (c) Cluster 3, which includes land parcels where physical and juridical data cannot be documented and issued a Land Certificate because the subject and/or object of the right does not meet certain requirements stipulated in this Ministerial Regulation; and
- (d) Cluster 4, which includes land parcels where the subject and object are already registered and have a Land Certificate, either unmapped or mapped but not in accordance with field conditions or there have been changes in physical data, must be mapped into the Complete Systematic Land Registration Map.

In this research case, based on an interview with Mr. Ruri, an employee of the ATR/BPN Sidoarjo Regency, land registration falls into Cluster 2 (hereinafter referred to as K2), when the land certificate has been issued but there are objections or disputes regarding the ownership of the land. As explained earlier, obstacles in the implementation of PTSL at the ATR/BPN Sidoarjo Regency occur, and if any issues arise, the initial step taken is to categorize the land status under K2. In this cluster, the certificate has been issued, but issues such as data forgery, disputes among heirs



regarding the underlying rights, and discrepancies in land measurement may occur.

The non-litigation dispute resolution process handled by the Adjudication Committee does not reach a consensus. If such a situation occurs, the issuance of the certificate cannot proceed, as the resolution involves legal proceedings to determine the rightful owner of the disputed land. Even though there is still a dispute over land ownership, the land survey and mapping continue, but the ownership certificate is not granted to the PTSL applicant. This is because it awaits a court decision that declares the rightful owner, and after obtaining a final and binding decision, the ownership certificate will be issued in the name stated in the court ruling. The government's efforts to provide convenience to the public are meaningless if there are parties objecting to the land submitted for PTSL, creating issues in the PTSL process. In the case of land disputes conveyed or reported and handled by the National Land Agency, the resolution is conducted gradually, following the Head of the National Land Agency Regulation Number 3 of 2011 regarding the Management of Land Case Assessment and Handling.¹¹

Efforts made by the ATR/BPN Sidoarjo Regency to overcome these obstacles include engaging in mediation when each party remains adamant about the land in question. Mediation is one of the dispute resolution processes that is faster, more cost-effective, and provides greater access for parties to find a satisfactory solution that meets the principles of justice. Mediation is an alternative dispute resolution frequently used outside of the courtroom. It was introduced in Indonesia in 1997 during the economic crisis, which led to political turmoil and triggered numerous conflicts, both vertically and horizontally. This situation inspired the development of conflict management techniques, followed by the establishment of many

¹¹ Muhamad Burhanuddin, Lidya Christina Wardhani, and Faizal Adi Surya, "Pelaksanaan Pendaftaran Tanah Sistematis Lengkap (Ptl) Sebagai Upaya Untuk Mencegah Sengketa Kepemilikan Dan Batas Tanah Di Kantor Pertanahan Kabupaten Kudus," *Jurnal Suara Keadilan* 23, no. 1 (2022): 51-61, <https://doi.org/https://doi.org/10.24176/sk.v23i1.8555>.



Alternative Dispute Resolution (ADR) study centers to handle disputes or conflicts.¹²

The resolution of disputes identified in Sidoarjo Regency before the PTSL program registration process involves mediation through negotiation to reach an agreement assisted by a mediator. In handling PTSL issues through mediation, the Adjudication Committee of ATR/BPN Sidoarjo Regency summons both parties to attend a mediation session at the ATR/BPN Sidoarjo Regency office. Each party is given an equal opportunity to present their arguments. If an agreement is not reached through mediation, the registration process for the PTSL program will be postponed until a resolution is achieved between the involved parties.

Efforts to resolve issues after the issuance of certificates, including objections or disputes, involve mediation similar to the dispute resolution identified before the PTSL process. If various peace efforts in mediation do not lead to an agreement, and the conflicting parties cannot reconcile to allow the issuance of ownership certificates, ATR/BPN Sidoarjo Regency prepares an official report stating that the dispute between the parties regarding the differences in physical and juridical data ownership over the land cannot be resolved amicably, thereby preventing the issuance of ownership certificates. If a peaceful resolution is not achievable through mediation, the dispute may proceed to litigation in court or be brought to an arbitrator.¹³

All parties are encouraged to resolve the issues arising from the issuance of the Land Ownership Certificate through the legal process to determine which party has the right to the land. While the involved parties are still pursuing legal avenues, the certificate is not processed by the ATR/BPN Sidoarjo Regency because the issue is still being adjudicated in court. After a court decision determines the rightful owner of the land, the name specified in the judgment will be included in the certificate. The issuance of the Land Ownership Certificate for the land will then be

¹² Achmad Romsan, *Alternative Dispute Resolution, Teknik Penyelesaian Sengketa Di Luar Pengadilan: Negosiasi Dan Mediasi* (Malang: Setara Press, 2016).

¹³ Riska Fitriani, "Penyelesaian Sengketa Lahan Hutan Melalui Proses Mediasi Di Kabupaten Siak," *Jurnal Ilmu Hukum* 3, no. 1 (2012), <https://doi.org/http://dx.doi.org/10.30652/jih.v3i01.1031>.



processed in the following year's PTSL program. The provision in Article 32, paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration is prone to disputes because the certificate, as evidence of land rights, cannot guarantee its accuracy, as stated in Article 32, paragraph (2) of the same regulation, which states:

"In the case of a piece of land that has been validly issued in the name of a person or legal entity acquiring the land in good faith and effectively controlling it, another party claiming rights to the land cannot demand the execution of those rights if, within 5 (five) years from the issuance of the certificate, no written objections have been submitted to the certificate holder to the Head of the relevant Land Office or no lawsuit has been filed with the Court regarding land possession or the issuance of the certificate."

The explanation in Article 32, paragraph (2) of Government Regulation Number 24 of 1997 concerning Land Registration states that the state does not guarantee the accuracy of the presented data because Indonesia adopts a negative publication system with positive elements. This system implies that strong evidence is needed, as stated in Article 19, paragraph (2) letter c of the Basic Agrarian Law (UUPA), which designates the certificate as a strong evidence tool. This negative publication system with positive elements is implicit in the strong evidence as declared in Article 19, paragraph (2) letter c, Article 23, paragraph (2), Article 32, paragraph (2), and Article 38, paragraph (2) of the UUPA. Article 32, paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration declares that the certificate serves as a strong evidence tool regarding physical and juridical data.

CONCLUSION

The implementation of Article 22, paragraph (2) of the Minister of ATR/BPN Regulation Number 6 of 2018 concerning PTSL regarding incomplete or nonexistent land ownership evidence in the ATR/BPN Office of Sidoarjo Regency, executing the PTSL program from 2017 to 2023, has been in accordance with the regulations. However, there are some issues regarding PTSL participants who lack or have incomplete land ownership evidence. Accordingly, in line with Article 22, paragraph (2) of the Minister



of ATR/BPN Regulation Number 6 of 2018 concerning PTSL, which obliges PTSL participants to create a written statement with good faith. The challenges faced by the ATR/BPN Office of Sidoarjo Regency regarding disputes that occur in the community within the PTSL program include disputes over land data forgery, disagreements among heirs about the ownership of the underlying rights, differences in size during the measurement of a piece of land, lack of understanding among the public about the importance of land surveying, and technical obstacles in the field. Efforts by the ATR/BPN Office of Sidoarjo Regency involve non-litigation solutions or mediation as an initial step in resolving these disputes through the Adjudication Committee or a mediator to reach a consensus or agreement. If an agreement is not reached through mediation, the registration process in the PTSL program will be postponed until a resolution is reached among the parties involved. If issues arise after the issuance of the certificate, involving objections or disputes, mediation will be attempted. However, if no agreement is reached, the matter will proceed to the legal process to determine the rightful party for the disputed land

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