



Efforts to Realize Legal Certainty of Land Ownership in Lampung through Blocking of Land Certificate

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Abstract

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Article 19 of the UUPA states that land registration is carried out as a way to guarantee legal certainty of land rights. The Land Office will issue a certificate of land rights for rights holders. Therefore, the right holder is obliged to register at the local Land Office if there is a transfer or assignment of rights. This study aims to determine: 1) the legal status of the blocked land certificate, and 2) the legal certainty of the land title certificate when the registration of the block has passed 30 days or there has been a court decision regarding the block. This study uses a normative juridical research method. The approach to the problem used is a statutory approach and a conceptual approach. The data analysis used is qualitative in the form of descriptive analytical. The data source used is in the form of secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials. The research results show that: 1) the legal status of the blocked land title certificate is that transitional legal actions and land rights are imposed. 2) The legal certainty of a land title certificate when the registration of the block has passed 30 days is the restoration of the legal status of the land title certificate holder.



A. Introduction

Land issues in Indonesia are listed in Law Number 5 Year 1960, or commonly referred to as UUPA. Article 19 of the UUPA stated that land registration is carried out as an effort to create legal certainty over lands. The elaboration of Article 19 of the UUPA has been followed up by Government Regulation Number 10 of 1961 and revised by Government Regulation Number 24 of 1997 concerning Land Registration. Providing legal certainty is the main purpose of land registration activities, another purpose can be used for legal protection to rights holders through land title certificates. A certificate is a document of strong ownership of a land right unless it can be proven otherwise.¹ Therefore, every legal subject has the potential to provide threats regarding the truth of the certificate. This is because the land identification and administration mechanism in Indonesia adheres to a negative but positive tendency, which means that a certificate is a strong proof of ownership as long as there is no claim from another party that is filed by someone who thinks they have the right to this area, even though the state does not fully guarantee it. Regarding the accuracy of the land parcel data stated on the certificate.²

Rights disputes relating to land originate from complaints filed by individuals or legal entities regarding objections or claims against land ownership status.³ Land disputes occur in both registered and unregistered land parcels.⁴ Legal subjects who feel they have rights and interests over an object called land can file a legal action in the form of a lawsuit to the court which results in blocking the certificate of land rights. Blocking is carried out as an effort to prevent or temporarily stop all forms of changes. In addition, the head of the land office also has the right to refuse to take legal actions in the form of transferring rights or assigning rights if the related land gets into problems and disputes in the form of disputes in court.⁵

Recording will be carried out and included in the power of land registration if there is land that has been blocked.⁶ Recording in the land book includes changes to existing juridical data. If there is a change in physical data or juridical data on a land object that has been registered, the right holder must maintain the land registration data at the land office.⁷ The maintenance of land registration data at the land office aims to update the available data so that it is always in accordance with the circumstances.⁸ In Article 126 P.MNA / Ka.BPN Number 3 of 1997 concerning Implementation Regulations of PP Number 24 of 1997 PMNA / KBPN No. 3 of 1997 states that the land office will process block records of objects of land rights which are the basis for a lawsuit in court if the parties concerned show a copy of the lawsuit on the land object concerned. Notes on the block will be deleted after 30 days from the date of recording or if there is a request for revocation from the party concerned even though it has not been 30 days.⁹ The judge in charge of the case determines the position of the land right, so it will be immediately written down and written in the land book. Notes on

¹A. P. Parlindungan, *Pendaftaran Tanah Di Indonesia*, Mandar Maju, Bandung, 1999, pg. 127.

²Mhd. Yamin Lubis dan Abd. Rahim Lubis, *Hukum Pendaftaran tanah Edisi Revisi*, Mandar Maju, Bandung, 2012, pg. 174

³Rusmadi Murad, *Penyelesaian Sengketa Hukum Atas Tanah*, Penerbit Alumni, Bandung, 1991, pg. 22.

⁴Prianggietta Ayuni, Made Maharta Yasa, and Program Kekhususan Peradilan, "Sistem Blokir Dan Sita Dalam Penyelesaian Sengketa Agraria Diluar Pengadilan Untuk Melindungi Hak Pembeli Beritikad Baik," *Kertha Wicara : Journal Ilmu Hukum* 07, no. 05 (2017): 1–18, <https://ocs.unud.ac.id/index.php/kerthawicara/article/view/44802>.

⁵Pasal 45 ayat (1) huruf e Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah.

⁶Kusuma Putra Setiyabudi, J Ronald Mawuntu, and Cornelius Tangkere, "KAJIAN HUKUM TERHADAP PEMBLOKIRAN BUKU TANAH DALAM PENDAFTARAN TANAH," *Lex Et Societatis*, vol. 8, July 22, 2020, <https://ejournal.unsrat.ac.id/index.php/lexetsocietatis/article/view/29497>.

⁷Adrian Sutedi, *Peralihan Hak Atas Tanah Dan Pendaftarannya*, Sinar Grafika, Jakarta, 2010, pg. 143.

⁸Filzah Azizah Ibrahim, "PEMBLOKIRAN BUKU TANAH YANG DILAKUKAN OLEH PIHAK PEMBELI BERDASARKAN AKTA PERJANJIAN PENGIKATAN JUAL BELI," *NOTARIUS* 11, no. 1 (May 11, 2018): 43, <https://doi.org/10.14710/nts.v11i1.23124>.

⁹Anisa Sekarsari, Haryo Budhiawan, and Akur Nurasa, "Pelaksanaan Pencatatan Blokir Sertipikat Hak Atas Tanah (Studi Di Kantor Pertanahan Kabupaten Sleman Dan Bantul)," *Jurnal Tunas Agraria* 2, no. 2 Mei (May 14, 2019): 117–35, <http://jurnaltunasagraria.stpn.ac.id/JTA/article/view/32>.

the status quo will be erased by themselves after 30 days, unless there is a decision on confiscation of collateral sent to the land office in the form of an official copy and an execution report.

The cause of the blocking of land title certificates is due to a lawsuit in court against a land object. The activities of blocking at the land office causes legal implications for an object of rights to the land, the result is that no transfer of rights can be carried out or there are activities against the imposition of rights to land.¹⁰ So that all change processes cannot be carried out temporarily for the sake of smooth settlement of disputes until the block notes have been deleted by themselves or have been revoked.

The blocking implementation process is regulated in Perkabab No.1 of 2010 concerning Service Standards and Land Management. The scope of this regulation includes groups and types of services, requirements, costs, time and procedures. The procedure for blocking recording services is through the land office service counter.¹¹ Blocking requests are registered at the service counter by completing the requirements first, then paying the registration fee at the payment counter and continuing with the service process.¹² Services at this counter use a web-based Computerized Land Activities application (hereinafter referred to as the KKP web application).

However, in practice sometimes there is no uniformity between Land Offices. Therefore, P.MNA No.13 of 2017 regarding Block and Confiscation Procedures was issued. This latest provision provides clarity regarding blocking logging because the old regulations do not regulate in their entirety and there are inconsistencies with developments in society. With the enactment of the new regulation, the implementation of the application for blocking at the Bandar Lampung City Land Office is guided by the Regulation of the Minister of Agrarian Affairs No. 13 of 2017 concerning Procedures for Blocking and Confiscation. In this regulation, it is explained that the implementation of blocking begins with submitting a letter of application, and then the incoming letter is followed up by a reply letter from the land office.¹³ The reply letter is the result of a review by the block and seizure handling team in the Land Office. The formation of a team for handling blocking and confiscation is based on the Decree of the Head of the Land Office of each region.

Based on data obtained at the Bandar Lampung City Land Office, block applications were granted and recorded reaching 259 fields in the last five years, from January 1, 2015 to March 31, 2019.¹⁴ In fact, the implementation of block registration creates a dilemma, so the problem can be formulated, namely what is the legal consequence of the status of a block certificate, and what is the legal certainty of a land title certificate when the registration of the block has passed 30 days or a court ruling regarding the block has been made.

This study uses a normative juridical research method. The approach to the problem used is a statutory approach and a conceptual approach. The data analysis used is qualitative

¹⁰Ida Ayu Wulan Rismayanthi, "Tanggung Jawab Pejabat Pembuat Akta Tanah (PPAT) Terhadap Pendaftaran Peralihan Hak Atas Tanah Yang Menjadi Objek Sengketa," *Acta Comitas*, no. 10 (2016): 2015–16, <https://doi.org/10.24843/ac.2016.v01.i01.p07>.

¹¹C. (CAHRYA) HALOHO, "PERLINDUNGAN HUKUM KEPADA PEMBELI YANG BERITIKAD BAIK DALAM HAL DILAKUKANNYA PENCATATAN BLOKIR DAN SITA PADA SERTIPIKAT HAK ATAS TANAH OLEH KANTOR PERTANAHAN KOTA MEDAN CAHRYA HALOHO," *Premise Law Journal*, vol. 10 (University of North Sumatra, 2015), <https://www.neliti.com/publications/14103/perlindungan-hukum-kepada-pembeli-yang-beritikad-baik-dalam-hal-dilakukannya-pen>.

¹²Ferdian Setyo Wibowo, Novita Listyaningrum, and Hery Zarkasyih, "Perlindungan Hukum Bagi Pemegang Hak Atas Tanah Dalam Hal Terdapat Sertipikat Ganda Di Kantor Pertanahan Kabupaten Lombok Timur," *Media Bina Ilmiah* 14, no. 6 (2020): 2711–26, <http://ejurnal.binawakya.or.id/index.php/MBI>.

¹³Redy Savendra Sihalo and Agus Nurudin Program Studi Magister Kenotariatan, "PELAKSANAAN BLOKIR SERTIPIKAT HAK ATAS TANAH DITINJAU DARI ASPEK KEPASTIAN HUKUM," *NOTARIUS* 12, no. 2 (March 11, 2020): 550–65, <https://doi.org/10.14710/nts.v12i2.28995>.

¹⁴Wawancara Kepala Kantor Pertanahan Kota Bandar Lampung, Yuniar Hikmat Ginanjar.

in the form of descriptive analytical. The data source used is in the form of secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials.

B. Discussion

The definition of blocking according to the Big Indonesian Dictionary is freeze something; block i.e. freeze, dismiss; blocking is the process, the means, the act of blocking. Blocking is derived from the word “block” which means preventing it from being able to enter and exit (taken).¹⁵ The term “blocking” is often used by the general public for prevention of mutations or changes.¹⁶

The parties that can apply for blocking are mentioned in Article 125, Article 126 and Article 127 P.MNA / Ka.BPN No.3 / 1997, but not in detail. The recording of a block can be carried out based on a confiscated order from the court judge, from the investigating apparatus, as well as from parties having an interest in the land object.¹⁷ From this explanation, the subject/party requesting the blocking or confiscation, namely:

- a. Land rights holders;
- b. Judicial Bodies include District Courts, State Administrative Courts, Religious Courts and Military Courts;
- c. Prosecutor/Police;
- d. Other interested parties.

The object of blocking is the object of ownership of land rights. The object of this blocking is mentioned in Article 125, Article 126, and Article 127 P.MNA / Ka.BPN No. 3 / 1997. The object of ownership of land rights in question is the same as the object of land registration as in Article 9 PP No. 24 of 1997, which is:¹⁸

- a. Land objects with the status of ownership rights, use rights, building use rights, and use rights;
- b. Land objects with management rights status;
- c. Land objects with the status of waqaf land;
- d. Land object with the status of ownership rights over apartment units;;
- e. Land object with mortgage status.

Theory is a system that organizes various ideas about knowledge that occur in the world which are summarized for use as a means of work.¹⁹ The theoretical framework in research is a determinant of the goals and directions in choosing the right concepts to generate hypotheses.²⁰ in theoretical research; it functions as a direction and guidance as well as an explanation of the symptoms that occur. In this research, the theory used by the author is: first, the theory of authority, second, the theory of legal certainty, and the third theory of property rights.²¹

1. Legal Status of Blocked Land Rights Certificate

Indonesia uses a system with positive/negative publicity elements in land registration, these characteristics can be seen as follows:

¹⁵W.J.S. Poerwadarminta, *Kamus Umum Bahasa Indonesia*, Balai Pustaka, Jakarta, 1986, pg.146

¹⁶Rusmadi Murad, *Penyelesaian Sengketa Hukum Atas Tanah*, Penerbit Alumni, Bandung, 1991, pg. 25

¹⁷Mhd. Yamin Lubis dan Abd. Rahim Lubis, *Hukum Pendaftaran tanah Edisi Revisi*, Mandar Maju, Bandung, 2012, pg. 160.

¹⁸S. Chandra, *Sertipikat Kepemilikan Hak Atas Tanah Persyaratan Permohonan Di Kantor pertanahan*, Gramedia Widiasarana Indonesia, Jakarta, 2005, pg. 12.

¹⁹HR. Otje Salman S dan Anton F Sutanto, *Teori Hukum*, (Bandung : Refika Aditama, 2005, pg. 22.

²⁰Soerjono Soekanto, *Pengantar Penelitian Hukum*, (Jakarta :UI Press, 1986), pg.129.

²¹Khairina Khairina, “SERTIFIKAT CACAT HUKUM DALAM HUKUM PERTANAHAN DI INDONESIA,” *JURIS (Jurnal Ilmiah Syariah)* 13, no. 1 (August 21, 2018), <https://doi.org/10.31958/JURIS.V13I1.1126>.

- a) There is a committee in charge of researching and examining, which is called Committee A and B. The conclusions of the research results are: first, the application for registration of the object of the land parcel submitted is in good and clear condition; second, is not in a ownership dispute; third, if the committee is sure that the application can be forwarded; fourth, there are no people who object to the basic rights used in filing for registration.
- b) In PP. 24/1997 explained that the PPAT task was to examine the documents provided and refuse the deed if the owner was not authorized to transfer his / her rights. In addition, to streamline the PPAT task mechanism, the government has provided deed models.
- c) A statement of ownership is issued in the form of a land certificate.

Many of the block requests submitted to the land office are the result of failed policies in land law to protect the people in controlling, using, owning and utilizing land. The implementation of policies in land law depends on the participation of public leaders, because the position of public leaders in government is very important, namely having the authority to design a policy that can affect the wider community.²² The authority of this public leader can be used to accommodate the aspirations of citizens, because otherwise the policies that are carried out only side with certain groups of society.²³

Land disputes take place as a result of injustice, legal vacuum and legal products that do not accommodate all the interests of the community.²⁴ This explains the desire to solve land problems with the aim of carrying out one of the goals of the state, namely to create a just and prosperous society and to realize one of the objectives of positive law that emphasizes legal certainty.²⁵

Based on the above explanation regarding the policy of the land office, we can conclude that a certificate is a certificate of evidence that can be used as strong evidence against ownership of land rights containing a copy of the land book and a measuring letter containing the juridical and physical data of the land parcel. The party who considers that their interests have been impaired because an individual or a legal entity has issued a certificate of land rights has the right to file a lawsuit at the Court.²⁶ In connection with the legal consequences of blocking the land title certificate by the Bandar Lampung City land office, those who think that their interests have been harmed can submit a request for blocking the certificate of land rights at the local Land Office.

Article 37 paragraph (1) PP 24/1997 in conjunction with Article 94 P.MNA / Ka.BPN No. 3/1997 explains that the transfer of rights can take place through buying and selling, grants, exchange, sharing of joint rights, appointment of auctions, court decisions, inheritance, wills and inclusion in companies. Registration of land rights because the auction in the city of Bandar Lampung took place was caused by bad credit for mortgage rights, and for tenders due to pre-emptive rights were scarce. This is because there are no further regulations relating to the auction within the ATR Ministry.

²²Naila Huurin In and Fauzul Aliwarman, "IMPLEMENTASI BLOKIR SERTIPIKAT KEPEMILIKAN HAK ATAS TANAH DI KANTOR BPN KOTA SURABAYA," *Simposium Hukum Indonesia*, vol. 1, June 12, 2019, <http://journal.trunojoyo.ac.id/shi>.

²³Fery Irwanda, "Pelaksanaan Wewenang Kantor Pertanahan Dalam Pendaftaran Tanah (Studi Di Kecamatan Kuta Baro Kabupaten Aceh Besar)," *Syiah Kuala Law Journal* 1, no. 3 (December 14, 2017): 150–63, <https://doi.org/10.24815/sklj.v1i3.9644>.

²⁴Andi Steven Liono et al., "PERLINDUNGAN HUKUM BAGI PEMBELI LELANG HAK TANGGUNGAN," *Jurnal Ilmiah Hukum DE'JURE: Kajian Ilmiah Hukum*, vol. 3, May 10, 2018, <https://doi.org/10.35706/DEJURE.V3I1.1882>.

²⁵Danar Fiscusia et al., "PENDAFTARAN HAK ATAS TANAH BERDASARKAN PUTUSAN PENGADILAN Land Registration Law by the Court Judgement," *Fiat Justisia Journal of Law*, vol. 10, 2016, <http://jurnal.fh.unila.ac.id/index.php/fiat>.

²⁶Kurniawan Ghazali, *Cara Mudah Mengurus Sertipikat Tanah*, (Jakarta: Kata Pena, 2013), pg. 68

If the certificate of land rights is blocked and confiscated, the owner of the land right does not get legal protection because it is to protect the land rights until the block process is complete and it is clear who is entitled to the land parcel. In addition, if a plot of land is indicated to have been obtained from corruption, the Land Office has no right to block it

Until there is an investigation and a letter requesting blocking from law enforcement officials. Article 39 of PP No.24 / 1997 explains that PPAT cannot make a deed if a plot of land does not show the original certificate or is in the process of being blocked. From the explanation of the article, it can be concluded that if a parcel of land is in a state of blockage, the owner may not take any legal actions such as transferring or assigning rights until the block process is complete.

2. Legal certainty of land title certificate when the registration of the block has passed 30 days or there is already a court decision related to blocking

The policy of freezing a certificate has an impact on the status quo (freezing) of the certificate. The certificate of land in question cannot be subject to legal action and legal events such as sale and purchase, inheritance or being encumbered with Mortgage Rights.²⁷ This policy is inseparable from the authority of the Land Office, which has the duties and functions of a government agency in charge of matters relating to land rights.²⁸ The Head of the Bandar Lampung City Land Office as a public official has exercised his authority to comply with legal rules to carry out public obligations, for the context of blocking records. The Bandar Lampung City Land Office accepts and processes block requests based on strong legal standing from the applicants, such as documentary evidence which shows that the object of land rights in question deserves to be blocked.²⁹

In Article 1 paragraph (1), (2), (3) of the UUPA state that there are three reasons for the authority in the land sector to be with the central government, namely:

1. Indonesia is a unitary territory as the Indonesian nation.
2. The national assets of the Indonesian people consist of earth, water, space and all natural resources contained.
3. The nature of the relationship between the Indonesian nation and the earth, water and space is eternal.

Regarding the legal certainty of a land title certificate when the recording of the block has passed 30 days or after the Court's Decision regarding this matter, according to Article 13 P.MNA / Ka.BPN No. 13/2017 regarding the Block and Confiscation Procedures, the block period and legal status of the land title certificate can be described as follows:

a. Article 13

Article 13 explains that blocking registration by individuals or legal entities is valid for 30 (thirty) days from the date of recording. This period of time can be extended if there is an order from the court in the form of a ruling or decision.

b. Article 14

Article 14 explains that the recording of blocks carried out by law enforcers is valid until the criminal case is terminated or the investigator himself removes the block.

²⁷Iwan Permadi, "PERLINDUNGAN HUKUM TERHADAP PEMBELI TANAH BERSERTIFIKAT GANDA DENGAN CARA ITIKAD BAIK DEMI KEPASTIAN HUKUM," *Yustisia Jurnal Hukum* 5, no. 2 (August 1, 2016): 448–67, <https://doi.org/10.20961/yustisia.v5i2.8762>.

²⁸Chintya Agnisya Putri and Gunarto, "Efektivitas Pengecekan Sertifikat Terhadap Pencegahan Sengketa Tanah Dalam Proses Peralihan Hak Atas Tanah," *AKTA* 5, no. 1 (2018): 121–38, <https://doi.org/10.1016/j.cell.2017.12.025%0A>.

²⁹Kutipan wawancara penulis dengan Ahmad Aminullah selaku Kepala Kantor Pertanahan Kota Bandar Lampung, pada tanggal 10 Maret 2019.

c. Article 15

Article 15 explains that applications for blocking made by individuals or legal entities will be canceled if the blocking grace period ends and is not prolonged. The party submits the application.

Based on Article 15 P.MNA / Ka.BPN No. 13/2017 regarding the Block and Confiscation Procedures mentioned above, the block note after 30 days listed in the certificate will automatically void when there is no extension from the applicant and there is a Court Decision. However, the KKP web application at the Land Office has not accommodated blocks that have expired (30 days) so you still have to submit a written application to the Land Office, then administratively at the Land Office the block has been removed.

C. Conclusion

The legal consequence of the status of a land title certificate that is blocked is that it results in the holder of a land title certificate temporarily unable to take any legal action, apart from controlling the physical body. A certificate that is blocked cannot be subject to legal action of transfer of land rights and imposition of land rights until the termination of the block status. The status of the block is cancelled after 30 days from the date of recording of the block and can be extended if there is a court order in the form of a ruling and decision. Besides that, the legal certainty of a land title certificate when the registration of the block has passed 30 days is the restoration of the legal status of the land title certificate holder. However, it must be accompanied by a letter requesting the removal of the block made by the applicant for the blocking to the head of the land office and done in writing because the KKP web application has not yet accommodated the block which has expired (30 days).

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