



## Land Law Reform in Ensuring Legality and Certainty of Ownership Rights for Houses and Buildings

Ridwan Anthony Taufan<sup>1\*</sup>, Azis Budianto<sup>2</sup>

<sup>1-2</sup>Universitas Borobudur, Indonesia

Email : [ranthony.taufan@gmail.com](mailto:ranthony.taufan@gmail.com)<sup>1\*</sup>, [azis\\_budianto@borobudur.ac.id](mailto:azis_budianto@borobudur.ac.id)<sup>2</sup>

Author's correspondence: [ranthony.taufan@gmail.com](mailto:ranthony.taufan@gmail.com)

**Abstract.** Ownership rights to houses and buildings are the highest form of ownership recognized in the land law system in Indonesia. The legality of this ownership right is vital to ensure legal certainty for the owner and prevent potential disputes that may arise due to unclear ownership status. The study analyzes the legal aspects of ownership rights to houses and buildings, including the legal basis, acquisition procedures, and legal protection mechanisms available to the owner. In addition, this study also examines various problems that often arise in the ownership of property rights, such as overlapping certificates, ownership conflicts, and legal implications in the process of transferring rights. The analysis uses a normative legal method with a conceptual and statutory approach. The Basic Agrarian Law (UUPA), Government Regulations, and Regulations of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency (ATR/BPN) are among the regulations that control ownership rights to land and buildings. The statutory approach is carried out by examining these regulations. Meanwhile, the conceptual approach is applied to examine the concept of ownership in land law and the underlying legal principles. The data used in this study are sourced from literature studies, including legal literature, academic journals, and official documents related to land regulations in Indonesia. The results of this study are expected to contribute to a more comprehensive understanding of the legality of ownership rights to houses and buildings, as well as being a reference for landowners, legal practitioners, and the government in managing the legal aspects of land and building ownership. With firmer legal certainty, it is hoped that a more transparent and equitable land system can be created for all interested parties.

**Keywords:** Land Law, Legal Protection, Legality, Ownership Rights

### 1. INTRODUCTION

House and building ownership is an important aspect of people's lives because it is directly related to the right to a place to live and property investment. In a legal context, legal certainty over home and building ownership is crucial to protect the owner's rights from potential disputes and legal problems in the future (Ramadhani, 2021). Legal ownership must be supported by legal documents recognized by the state, such as a land title certificate issued by the National Land Agency (BPN). Without legal certainty, property owners can face various risks, such as ownership claims from other parties, overlapping certificates, or even cancellation of property rights due to unclear regulations (Jamil, 2024).

Legal problems that often arise in home and building ownership are generally related to the status of land and building ownership that is not properly documented. Many people still own property without official certificates, especially in urban areas with rapid population growth and in rural areas that still use the customary ownership system (Putri, 2023). In addition, the practice of buying and selling land and buildings that do not follow the correct legal procedures is also often the cause of disputes in the future. The existence of land mafia,

document forgery, and the lack of public understanding of the importance of property legality further complicate this problem (Wirawan, 2020).

In the context of government policy, regulations related to home and building ownership continue to develop to create a more transparent and accountable land system. The government has implemented various policies, such as the free land certification program through the Complete Systematic Land Registration (PTSL) and the digitization of land documents to reduce the potential for misuse (Manurung, 2024). However, although various policies have been implemented, there are still obstacles to their implementation, including complicated bureaucracy, limited resources, and unequal access to land services in various regions. Therefore, further studies are needed to understand how existing regulations can be improved to provide better legal certainty for home and building owners in Indonesia.

## **2. METHOD**

A normative-empirical research methodology with a descriptive-analytical approach was employed in this study. Normative studies are carried out by reviewing various laws and regulations governing ownership rights to houses and buildings, both in the national scope and regional regulations related to property ownership. Some of the key regulations that are referred to in this study include Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA), Government Regulations related to land and building certification, and other policies related to legal certainty of property rights.

Additionally, this study also reviews legal documents, academic journals, and literature that discuss aspects of land and property law to comprehend how the concept of home and building ownership is regulated in the Indonesian legal system. As a complement, the empirical approach in this study is carried out by reviewing data obtained from official reports from related agencies, such as the Ministry of Agrarian Affairs and Spatial Planning, the National Land Agency (BPN), and other publications that address Indonesia's land policy implementation. Through this data, the study attempts to identify problems that often arise in home and building ownership, including administrative obstacles in the certification process, frequent legal conflicts, and the impact of government policies on legal certainty for property owners.

The analysis technique used in this study is qualitative analysis with a descriptive-analytical approach. It is carried out by reviewing and interpreting various regulations, legal documents, and other data sources to understand how legal rules are applied in practice and identify obstacles that still occur in the field. The results are then used as a basis for formulating

policy recommendations aimed at increasing legal certainty in home and building ownership, including proposals for improving regulations and increasing the effectiveness of the land administration system in Indonesia. Thus, this study not only provides a theoretical understanding of property rights to houses and buildings but also offers solutions that can be applied to overcome legal problems in property ownership.

### **3. Result and Discussion**

#### **Concept, Legal Basis, and Principles of Ownership Rights to Houses and Buildings**

Ownership rights are full and hereditary land rights and give the owner the authority to use, control, and utilize the land as long as it does not conflict with applicable legal provisions (Hadisiswati, 2014). In the Indonesian legal system, ownership rights are the strongest land rights, because they have no time limit and can be inherited by heirs. According to Article 21 of Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA), ownership rights are restricted to Indonesian residents (WNI) and specific government-designated legal entities (Sudiarto, 2021).

According to Article 20 of the UUPA, ownership rights to land are permanent rights and can be transferred or assigned to other parties through sale and purchase, grants, inheritance, or other forms of transfer (Murni, 2020). However, these ownership rights remain subject to the public interest and must not conflict with the social function of the land, as regulated in Article 6 of the UUPA. In practice, ownership rights can change status to other rights such as Building Use Rights (HGB) or Usage Rights, depending on the interests and designation of the land (Prayogi, 2018).

Ownership rights are different from Building Use Rights (HGB) and Usage Rights. HGB, as regulated in Article 35 of the UUPA, is a right granted to individuals or legal entities to construct and own buildings on land that is not theirs, either state land or land with certain rights. HGB is limited, with a maximum term of 30 years, and can be extended for another 20 years (Sari, 2020). Meanwhile, Usage Rights, as regulated in Article 41 of the UUPA, are the right to use and benefit from land owned by the state or other parties for a certain period, without complete land ownership (Sappe, 2021).

Different applicable laws in Indonesia control provisions pertaining to ownership rights to homes and buildings. Law Number 5 of 1960 respecting Basic Agrarian Regulations (UUPA), which governs land ownership and other rights that can be owned by persons and legal entities, serves as the fundamental legal foundation. Furthermore, the administrative procedure of land ownership is governed by Government Regulation Number 24 of 1997

concerning Land Registration, including the issuance of land title certificates by the National Land Agency (BPN) (Masriani, 2022). In addition to laws and government regulations, there are also regional regulations that regulate spatial planning and zoning of property ownership, which are adjusted to development policies in each region (Ridwan & Sodik, 2023). Supreme Court decisions are also an important source of law in enforcing legal certainty of property rights to houses and buildings. One example of an influential decision is Supreme Court Decision Number 834 K/Pdt/2019, which emphasizes that legal ownership of land must be supported by evidence of a certificate issued by an authorized agency, and rejects claims of ownership that do not have a strong legal basis.

In property law, legal certainty is the main principle that must be guaranteed by the government to avoid disputes over land and building ownership (Alam, 2023). Article 19 of the UUPA regulates the idea of legal certainty in property ownership, requiring the government to register land in order to give lawful owners legal protection. Land certificates, which serve as permanent legal proof of ownership, are one way that this legal certainty is expressed (Solikin, 2018).

The role of the National Land Agency (BPN) is vital in registering ownership rights to houses and buildings. BPN is responsible for issuing certificates of ownership through the land registration process regulated in Government Regulation Number 24 of 1997. With this registration system, property owners get legal protection from possible disputes and fraudulent acts that often occur in property transactions (Ningsih, 2022). In addition, the government has also implemented the Complete Systematic Land Registration (PTSL) program to accelerate the process of legalizing community land, especially in areas that do not yet have land certificates (Rohman, 2020).

Legal protection for legitimate property owners is also provided through dispute resolution mechanisms in court or mediation (Jayadi, 2023). Based on Article 32 paragraph (2) of Government Regulation Number 24 of 1997, registered land certificates have legal force as valid evidence, unless it can be proven that there was an administrative error or abuse of authority in the issuance process. Therefore, legitimate property owners have the right to maintain their ownership based on applicable law and receive protection from the state in the event of an unfounded claim of ownership.

### **Analysis of Home and Building Ownership Problems**

To legally obtain ownership rights to a house and building, a person must follow the land and building registration procedures stipulated in Land registration is governed by Government Regulation Number 24 of 1997. The National Land Agency (BPN) handles land registration in order to give landowners legal protection and assurance. The land registration process includes several stages, namely measuring the land area, checking legal data, issuing a land rights decision letter, and issuing a land title certificate. According to According to Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA), Article 19, the government is required to register land all over Indonesia to guarantee legal certainty for property owners (Malli, 2017).

The requirements for land and building ownership for Indonesian citizens (WNI) are stipulated in Article 21 of the UUPA, which states that ownership rights can only be owned by Indonesian citizens and certain legal entities determined by the government. On the other hand, foreign citizens (WNA) are not allowed to own land rights, but they can have a Right of Use as stipulated in Article 42 of the UUPA. In addition, Foreign nationals can more easily acquire property in the form of apartment units on the Right to Use or Right to Build land thanks to Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration (Poeloe, 2014).

The legal status of houses and buildings standing on state land or customary land is different from land that has a certificate of ownership. State land is land that is directly controlled by the state and can be given to certain parties in the form of the Right to Use or Right to Build based on a government decision (Santoso, 2012). Meanwhile, customary land is managed by the customary law community, and its existence is recognized in Article 3 of the UUPA, as long as its management does not conflict with national interests. However, because many customary lands have not been officially registered with the BPN, conflicts often arise between indigenous peoples and the government or private parties who want to control the land (Usman, 2020).

One of the problems that often occurs in property ownership is disputes due to overlapping land certificates. Overlapping certificates can occur due to administrative errors in the land registration process, claims of multiple ownership, or actions by land mafias who falsify documents. According to Article 32 paragraph (2) of Government Regulation Number 24 of 1997, registered land certificates have strong legal force, unless it can be proven that there is a legal defect in their issuance. Therefore, people who face disputes due to overlapping

certificates must go through the legal process to obtain certainty of their ownership rights (Utomo, 2023).

In addition, many lands and buildings are owned without official certificates, which can cause legal uncertainty for their owners. Based on Article 19 of the UUPA, the government is obliged to organize land registration to guarantee legal ownership rights. However, there are still many people who have not registered their land due to limited funds, lack of legal awareness, or bureaucratic obstacles. Ownership without a certificate is high risk because it can give rise to disputes in the future, especially if the land is claimed by another party or is affected by government policies related to spatial planning (Avivah, 2022).

Government policies in the arrangement of property ownership also have a major impact on the legality of property rights. The Complete Systematic Land Registration (PTSL) program is one way the government is working to enhance the land system which aims to accelerate land certification for people who do not yet have legal proof of ownership. This program is in line with Regarding the Acceleration of Complete Systematic Land Registration, Presidential Instruction Number 2 of 2018, which targets all land in Indonesia to have certificates to reduce land conflicts. However, the implementation of this program still faces obstacles such as limited human resources, overlapping land issues, and alleged irregularities in the registration process.

Settlement of property rights disputes over houses and buildings can be done through litigation or non-litigation. The litigation route is carried out through the courts, where the disputing parties file a lawsuit with the State Administrative Court (PTUN) or the District Court depending on the type of dispute that occurs. Article 1365 of the Civil Code (KUHPer) states that any unlawful act that causes harm to another person can be the basis for a lawsuit to obtain compensation or restoration of ownership rights. If the dispute relates to the issuance of a certificate that is considered legally flawed, a lawsuit can be filed with the PTUN to cancel its problematic certificates.

In some cases, the resolution of property rights disputes can also be done through a Supreme Court decision that provides a final decision regarding land and building ownership. One example of a crucial decision in resolving ownership disputes is Supreme Court Decision Number 834 K/Pdt/2019, which confirms that land certificates issued legally by the BPN have higher legal force compared to other proof of ownership. This decision is the basis for many land dispute cases involving ownership claims without official certificates. With an obvious dispute resolution mechanism, both through the courts and non-litigation channels, it is expected that property ownership conflicts can be resolved fairly and transparently. The

government also needs to continue to increase transparency in land administration and strengthen regulations to prevent future disputes.

#### 4. CONCLUSION

Ownership rights regarding houses and buildings are the strongest license privileges in Indonesian Agrarian Law, which are governed by the Basic Agrarian Regulations Law Number 5 of 1960 (UUPA). To ensure legal certainty, the procedure to acquire this ownership must be recorded with the National Land Agency (BPN). However, various challenges are still encountered in property ownership, such as overlapping certificates, unclear legality, and conflicts due to inconsistent land policies. Ownership disputes often arise due to the weak land administration system and the lack of public awareness of the importance of land certification.

Accelerating the Complete Systematic Land Registration (PTSL) program and fortifying laws that prohibit the abuse of land rights are two ways the government can further its role in guaranteeing legal certainty over property ownership. Land law reform is also needed to reduce the potential for disputes, especially by clarifying the mechanism for resolving land disputes in court and through mediation. Besides, strengthening the digitalization system for land certificates through e-Certificates must continue to be developed to increase transparency, and efficiency, and reduce the potential for forgery of land documents.

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