JLPH: Journal of Law, Politic and Humanities
E-ISSN: 2962-2816
P-ISSN: 2747-1985
https://dinastires.org/JLPH dinasti.info@gmail.com +62 811 7404 455
DOI: https://doi.org/10.38035/jlph.v5i4

Legal Certainty of Written Evidence of Land Formerly Owned by Indigenous Communities in Land Registration in Indonesia

Timoty Ezra Simanjuntak[1], Jokki Obi Mesa Situmeang[2], Aldo Prasetyo Riyadi[3], Mohammad Didi Ardiansah[4], Andi Sitti Ainy Nur Alifah[5].
[1]S&P Law Office, Jakarta, Indonesia, ezra@splawoffice.co.id.
[2]S&P Law Office, Jakarta, Indonesia, jokki@splawoffice.co.id.
[3]S&P Law Office, Jakarta, Indonesia, aldo@splawoffice.co.id.
[4]S&P Law Office, Jakarta, Indonesia, moh.didiardi@gmail.com.
[5]S&P Law Office, Jakarta, Indonesia, sitiainyy@gmail.com.

Corresponding Author: moh.didiardi@gmail.com[1]

Abstract: This research aims to examine the legal certainty regarding written evidence of land formerly owned by indigenous communities in the context of land registration in Indonesia following the enactment of Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration. Additionally, this research explores the mechanisms for resolving land ownership disputes based on written evidence of land formerly owned by indigenous communities. The research methodology is conducted through a normative juridical approach, supplemented by interviews with key informants and an analysis of relevant legislation. The findings indicate that, according to Government Regulation No. 18 of 2021, written evidence of land formerly owned by indigenous communities is deemed invalid and serves only as a clue for land registration in Indonesia. Consequently, there has been a shift in the evidentiary power that was previously recognized as valid evidence; under the new regulation, it is now merely a clue for land registration. Nevertheless, in the event of a dispute over ownership of such land, written evidence of land formerly owned by indigenous communities may still be utilized as evidence in court.

Keyword: Former Customary Land, Land Registration, Written Evidence.

INTRODUCTION

In the land ownership regime in Indonesia, various dynamics have occurred in its administration, which began even before Indonesia's independence. During the Dutch colonial period, a dualism of land law emerged in Indonesia, as there were lands subject to customary law and lands governed by Western law (Isnaini and Lubis, 2022). Lands governed by customary law are those owned by the indigenous population of Indonesia without written evidence of ownership rights (Muwahid, 2016). Despite the absence of written proof of land ownership, landowners are still obligated to pay taxes on the land they possess (Muwahid, 2016). Evidence of tax payments is recorded by village or sub-district officials in the Buku

Letter C (Andari et al., 2023). Landowners who have made tax payments are subsequently issued a Petuk/Girik/Pipil/Kekitir as proof of tax payment. These documents, Petuk/Girik/Pipil/Kekitir, are held and recognized by the community as evidence of the land ownership they possess (Masnadi et al., 2019). Normatively, these documents are acknowledged as written evidence of land formerly owned by indigenous communities.

Based on the above, the existence of the Buku Letter C at the sub-district level becomes crucial. The Buku Letter C serves as a record for documenting tax payment evidence and must contain information related to the owner's name, owner's serial number, parcel number, land tax list, date and consequences of changes, as well as the signature and stamp of the village head or sub-district head (Ulfah, 2022). However, in practice, the process of recording tax payment evidence in the Buku Letter C is conducted with disparities due to the lack of clues for the recording process (Sadjarwo, 2020). The mechanism for writing the Buku Letter C is left to the discretion of each village or sub-district. Furthermore, the recording of the Buku Letter C is often carried out carelessly and without due diligence (Natadiarta, 2020). The confusion arising from the recording and management of the Buku Letter C subsequently leads to data disharmony (Mayyasa et al., 2024). The information regarding land contained in the Buku Letter C becomes incomplete and even inaccurate. The absence of written evidence of land ownership by the indigenous population during the Dutch colonial period, coupled with the various issues associated with the Buku Letter C, presents a discourse on legal certainty regarding land ownership in the post-independence era of Indonesia. The state then has an obligation to provide legal certainty regarding the land rights held by the community.

The manifestation of the state's provision of legal certainty regarding land ownership to the community is actualized through land registration (Khoirunnisa et al., 2024). In this regard, the government enacted the Agrarian Act 5/1960, which establishes the obligation to register land in order to guarantee legal certainty of land ownership rights. Furthermore, the provisions related to land registration are regulated in Government Regulation No. 10 of 1961 concerning Land Registration (GR 10/1961). However, GR 10/1961 has been revoked and declared invalid, leading to the introduction of new provisions regarding land registration in Government Regulation No. 24 of 1997 concerning Land Registration (GR 24/1997). As an implementing regulation, the Minister of Agrarian Affairs/Head of the National Land Agency Regulation No. 3 of 1997 concerning the Implementation of Government Regulation No. 24 of 1997 on Land Registration (ATR/BPN Minister Regulation 3/1997) states that written evidence of land formerly owned by indigenous communities may be used as evidence for land certificate registration. Thus, in essence, the status of written evidence of land formerly owned by indigenous communities is not proof of land ownership but merely serves as evidence when applying for land certificate registration.

In practice, the process of transferring land rights often occurs solely based on written evidence of land formerly owned by indigenous communities. This is evident in the practice of land sales in the Karanggayam District, where transactions are conducted based on written evidence of land formerly owned by indigenous communities, involving changes to the land status in the Buku Letter C at the sub-district office. In practice, the seller's ownership of the land is based on the Tax Notification Letter (Surat Pemberitahuan Pajak Terutang/SPPT) and proof of payment of Land and Building Tax (Pajak Bumi dan Bangunan/PBB) by the seller (Palupi et al., 2019). Subsequently, the sale is conducted in the presence of the village head or sub-district head, accompanied by at least two witnesses who are familiar with the land object being sold. The transfer of land rights from the seller to the buyer occurs simultaneously with the payment process by the buyer to the seller (Palupi et al., 2019). Evidence of the completed land sale is a statement letter issued by the village head or sub-district head confirming that the sale has taken place, which serves as the basis for changing the name on the Tax Notification Letter to that of the buyer and will be recorded in the Buku Letter C at the sub-district office (Palupi et al., 2019).

The prevalence of land rights transfer practices based on written evidence of land formerly owned by indigenous communities prompted the government to issue Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration (GR 18/2021). This regulation introduces a condition whereby written evidence of land formerly owned by indigenous communities must be registered within a maximum period of five (5) years from the enactment of the regulation. Upon the expiration of this period, such written evidence is declared invalid and cannot be used as proof of land rights. Instead, this written evidence may only serve as a clue ('petunjuk') for land registration. Furthermore, the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation No. 16 of 2021 concerning the Third Amendment to the Minister of State for Agrarian Affairs/Head of the National Land Agency Regulation No. 3 of 1997 on the Implementation of Government Regulation No. 24 of 1997 on Land Registration (ATR/BPN Ministry Regulation 16/2021) also emphasizes that land evidence in the form of Petuk Pajak Bumi (Landrente), girik, pipil, kekitir, Verponding Indonesia, and other forms of evidence of former indigenous ownership, regardless of their names or terms, will no longer be valid after 5 (five) years from the enactment of GR 18/2021.

This condition essentially reflects the government's failure to address the confusion present in the land registration process that still relies on written evidence of land formerly owned by indigenous communities. In essence, the government should take action to harmonize the various forms of written evidence, as the realities on the ground continue to demonstrate a state of ambiguity. The government should not take actions that fail to acknowledge the diverse issues within the land registration process that still utilizes written evidence of land formerly owned by indigenous communities. The government's decision to issue GR 18/2021, which subsequently nullifies the evidentiary power of written evidence of land formerly owned by indigenous communities, will undoubtedly have specific implications for the land administration regime in Indonesia.

Based on the description provided above, there is an urgency to conduct further studies regarding the implications of GR 18/2021 on the land ownership regime in Indonesia. This is grounded in the fact that many members of the community still consider written evidence of land formerly owned by indigenous communities as valid proof of land ownership. Additionally, it is important to delve deeper into the efforts to resolve disputes concerning land that is still based on rights derived from written evidence of land formerly owned by indigenous communities. Therefore, this research aims to address several questions: First, what is the legal certainty regarding land that continues to utilize written evidence of land formerly owned by indigenous communities following the enactment of GR 18/2021 in the land registration process? Second, how are land ownership disputes resolved when based on written evidence of land formerly owned by indigenous communities after the enactment of GR 18/2021?.

METHOD

This type of research is normative legal research. Normative legal research is a method that relies on library studies, where the analysis is conducted on legal materials or secondary data (Soekanto and Mahmudji, 2003). In addition to relying on library studies, this research is also supported by interviews with sources, including Prof. Dr. Nurhasan Ismail, S.H., M.Si. as a Professor at the Fakultas Hukum Universitas Gadjah Mada and Sarjita, S.H., M.Hum. as a Lecturer at the Sekolah Tinggi Ilmu Pertanahan Nasional. The approach used in this research is the statutory approach (Marzuki, 2011). The conclusions in this research are drawn deductively, meaning that conclusions are derived from general principles to specific (Muhaimin, 2020).

RESULTS AND DISCUSSION

Legal Certainty Regarding Land Still Utilizing Written Evidence of Land Formerly Owned by Indiginious Communities Following the Enactment of Goverment Regulation No. 18 of 2021 in the Land Registration Process

Article 1, number 9 of GR 18/2021 states that land registration is a series of activities carried out by the government continuously, sustainably, and systematically. These activities consist of several stages, including the collection, processing, recording, presentation, and maintenance of physical and legal data, in the form of maps and lists regarding parcels of land, airspace, underground space, and apartment units. This also includes the issuance of certificates of land rights for parcels of land, airspace, and underground space that already have rights, as well as ownership rights over apartment units and certain rights that encumber them.

In its implementation, land registration is divided into two forms of activities: first-time land registration and the maintenance of data regarding land parcels (Sibuea, 2011). Specifically for unregistered land, there are two mechanisms for land registration that can be pursued: systematic registration and sporadic registration. Systematic land registration, also known as Complete Systematic Land Registration (Pendaftaran Tanah Sistematis Lengkap/ PTSL), is a first-time land registration activity conducted simultaneously by the National Land Agency (Badan Pertanahan Nasional/BPN) for all land registration objects across Indonesia within a specific village or sub-district area. In contrast, sporadic land registration is carried out based on requests from authorized parties regarding the land registration object, namely the applicant or their representative (Nurwahid et al., 2023).

Land registration, whether conducted systematically or sporadically, requires evidence that demonstrates a legal relationship between an individual and the land they own. This evidence in land registration is known as the basic legal basis for an individual to register the land. Furthermore, the proof of rights in land registration can be categorized into two types: proof of new rights and proof of old rights. In the context of proof of new rights, Article 23 of GR 24/1997 states that new land rights are evidenced through two mechanisms: the determination of the granting of rights by the authorized official according to applicable regulations when the rights are derived from state land or management rights, or through the original deed of the Land Deed Official (Pejabat Pembuat Akta Tanah/PPAT) that contains the granting of rights from the owner to the recipient of the rights in cases concerning building use rights and usage rights over private land.

In contrast to proof of new rights, which does not have any legal basis, proof of old rights, as stipulated in Article 24, paragraph (1) of GR 24/1997, is evidenced by documents regarding the existence of such rights. This evidence consists of written documents, the validity of which is determined by the adjudication committee in systematic land registration or by the Head of the Land Office in sporadic land registration. Written evidence deemed sufficient to serve as proof in land registration, as referred to in Article 24, paragraph (1) of GR 24/1997, is commonly known in the community by terms such as Letter C, Land Tax Receipt (Petuk Pajak Bumi), girik, pipil, kekitir, and Verponding Indonesia. Furthermore, if the evidence referred to in Article 24, paragraph (1) of GR 24/1997 is not fully available, land registration will be conducted through the acknowledgment of rights.

The acknowledgement of land rights originating from the conversion of old rights is based on the physical possession of the land in question for a minimum of 20 (twenty) consecutive years by the registration applicant and their predecessors. Article 24, paragraph (2) of GR 24/1997 also stipulates conditions for this acknowledgment based on possession, stating that the possession must be conducted in good faith and openly by the individual claiming the rights to the land, supported by testimony from credible witnesses. Additionally, the possession of the land, both prior to and during the announcement of land ownership, must not be contested by the relevant customary law community or the village/sub-district in question, nor by any other parties.

In practice, there are still many processes of land rights transfer that are not based on certificates but solely on written evidence of land formerly owned by indigenous communities. However, there are several Supreme Court jurisprudences that serve as legal references indicating that written evidence of land formerly owned by indigenous communities does not constitute proof of an individual's land ownership. Among these jurisprudences are Supreme Court Decision No. 234 K/Pdt/1992, which states that the village Buku Letter C is not proof of ownership but merely an obligation for an individual to pay taxes on the land they possess; Supreme Court Decision No. 34 K/Sip/1960, which asserts that the Land Tax Receipt (Girik) is not an absolute proof of ownership of a land parcel, even if the individual's name is listed on the receipt; Supreme Court Decision No. 775 K/Sip/1971, which states that the Tax Assessment Letter is only a payment receipt and does not guarantee that the name listed is the actual owner; and Supreme Court Decision No. 767 K/Sip/1970, which indicates that the Tax Assessment Letter is not an absolute proof of ownership because it often happens that the name of the previous landowner remains on the tax assessment letter, even though the land has already been transferred to another party. Therefore, it cannot be denied that in the land registration process, the community requires something known as a land certificate as a valid proof of rights that serves as evidence. However, Nurhasan Ismail, a Professor at the Fakultas Hukum Universitas Gadjah Mada, states that a certificate is not an absolute proof but rather a strong piece of evidence (Ismail, 2024). Consequently, if it is proven that there are errors or mistakes in the requirements and procedures of land registration, the land certificate can be annulled (Ismail, 2024).

The prevalence of land rights transfers based on written evidence of land formerly owned by indigenous communities prompted the government to issue 18/2021. Article 96 of this regulation essentially implies that for old rights, the written evidence considered sufficient for land registration—such as Letter C, Land Tax Receipt (Petuk Pajak Bumi), girik, pipil, kekitir, and Verponding Indonesia, as referred to in Article 24, paragraph (1) of GR 24/1997 will no longer be valid after five years from the enactment of PP 18/2021, which will be in 2026. Therefore, the proof of old rights based on Article 24, paragraph (1) of GR 24/1997 which can be conducted through written evidence of land formerly owned by indigenous communities, will no longer be applicable after five years of the enforcement of GR 18/2021.This situation has implications for the status of land that is solely based on written evidence of land formerly owned by indigenous communities, which will remain classified as land formerly owned by indigenous communities. This aligns with the opinion of Nurhasan Ismail, who states that Article 96 of GR 18/2021 does not fundamentally eliminate the status of land formerly owned by indigenous communities; rather, it indicates that the written evidence of such land is no longer usable (Ismail, 2024).

Registration of land classified as formerly owned by indigenous communities is then carried out through the mechanism of rights acknowledgment. Article 76A ATR/BPN Ministry Regulation 16/2021 has established a procedure for applying for the acknowledgment of rights to land that is classified as formerly owned by indigenous communities for the purpose of land registration. The application for rights acknowledgment must be accompanied by a statement of physical possession from the applicant, who is civilly and criminally responsible for the declaration. This statement must be witnessed by at least two (2) individuals from the local community who do not have familial ties with the applicant up to the second degree, both in vertical and horizontal kinship. The witnesses must affirm that the party applying for the acknowledgment of rights over the land is indeed the owner who possesses the land parcel in question, and that the statement is made based on truthful information that can be held accountable both civilly and criminally should any elements of falsehood arise in the future. The statement of physical possession must include the following declarations:

a) The land in question is indeed owned by the applicant and is classified as land formerly owned by indigenous communities;

b) The land has been physically possessed for a minimum of 20 (twenty) consecutive years;
c) The possession has been conducted openly by the applicant as the rightful owner, in good faith, which includes the actual physical control, use, benefit, and continuous maintenance of the land over a specified period and/or acquisition in a manner that does not violate applicable laws and regulations;
d) There are no objections from other parties regarding the ownership of the land and/or it is not in a state of dispute;
e) There are no objections from creditors when the land is used as collateral for debt; and
f) The land is not a government asset or owned by a State-Owned Enterprise or a Regional-Owned Enterprise and is not located within forest areas.

As mentioned above, Article 96, paragraph (2) of GR 18/2021 stipulates that after five years from the enactment of this regulation, written evidence of land formerly owned by indigenous communities is declared invalid and cannot be used as proof of land rights, serving only as an clue in the context of land registration. However, the regulation does not further explain what is meant by the term "clue" in Article 96, paragraph (2). Therefore, to understand the phrase "clue," it is necessary to compare it with several other laws and regulations that discuss the concept of "clue" as evidence. Before discussing the meaning of the term "clue," it is essential to first understand the various types of evidence. In the context of proving land rights, this is closely related to civil law. In civil law, there are five recognized types of evidence: documents, witnesses, presumptions, confessions, and oaths, as stipulated in Article 164 of the Indonesian Civil Procedure Code (Herzien Inlandsch Reglement/HIR) and Article 1866 of the Civil Code. Therefore, the concept of "clue" as a form of evidence is not recognized in civil law. The term "clue" is found within the context of criminal law, as regulated in Article 188 of the Indonesian Criminal Procedure Code.

Referring to Article 188 of the Indonesian Criminal Procedure Code , the term "clue" refers to actions, events, or circumstances that, due to their correspondence—both among themselves and with the criminal act itself—indicate that a crime has occurred and identify the perpetrator. Using this definition certainly has different relevance. In the context of criminal law, clues are used to determine an event, whereas in the context of Article 96 of GR 18/2021, clues are intended to establish a right. Nevertheless, the understanding of clues in the Indonesian Criminal Procedure Code, when connected to the clues in Article 96 of GR 18/2021, can be interpreted as "written evidence of land formerly owned by indigenous communities that, due to their correspondence, indicates that an individual is indeed the holder of rights over the land formerly owned by indigenous communities." This argument is further supported by the opinion of Nurhasan Ismail (2024), who states that the intent of Article 96 of GR 18/2021, which regulates that written evidence of land formerly owned by indigenous communities becomes a clue, is understood to mean that such written evidence can be used as proof if no other evidence, such as a certificate or deed, is available.

Furthermore, in GR 18/2021, written evidence of land formerly owned by indigenous communities is not the only type of evidence that has its strength reduced to that of a clue; the Village Head/Local Sub-District Head Certificate or the Certificate of Non-Dispute, commonly referred to as the Land Information Letter (Surat Keterangan Tanah/SKT), is also explicitly stated to have its strength limited to serving as a clue in land registration. Previously, the Land Information Letter was one of the requirements for the community to carry out land registration. This certificate is issued by the local village head or sub-district head. Sarjita (2024), a lecturer at the Sekolah Tinggi Pertanahan Nasional, argues that the Certificate of Non-Dispute (Surat Keterangan Tidak Sengketa/SKTS) is issued by the village head or sub-district head because they and their staff are considered the parties most knowledgeable about the land conditions in their area (Sarjita, 2024). However, he also criticizes that in practice, many village heads or sub-district heads are often irresponsible in issuing the Certificate of Non-Dispute. In several instances, the issuance of this certificate is frequently motivated by political pressures or

transactional practices between the applicant and the respective village head or sub-district head (Sarjita, 2024).

Historical facts indicate that in practice, the Land Information Letter issued by village heads or sub-district heads often gives rise to various problems. Additionally, courts frequently recognize the Land Information Letter as evidence of an individual's "ownership" of land, despite the fact that the Land Information Letter merely serves as a statement regarding an individual's physical possession of the land (Yasin, 2022). In 1984, through Ministerial Instruction No. 593/5750/SJ, the Minister of Home Affairs revoked the authority of sub-district heads and village heads to directly issue documents related to land proof.

Subsequently, in 2016, the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency issued Circular Letter No. 1756/15.1/IV/2016 regarding the Implementation Guidelines for Community Land Registration. This circular eliminated the SKT as a fundamental proof or basis for ownership in the process of applying for land certificate issuance, aiming to expedite the land registration process without being hindered by delays in the issuance of the Land Information Letter. Currently, it is reiterated in Article 97 GR 18/2021, which states that the Land Information Letter, compensation certificates, village certificates, and similar documents issued by village heads, sub-district heads, or district heads can only be used as clues in the context of land registration.

Land registration in Indonesia indeed still faces a multitude of problems that need to be addressed, particularly regarding the proof of rights over land formerly owned by indigenous communities. These issues include the lack of synchronization of data among institutions, disorganized land records, and the low level of public understanding regarding evidence of land rights. Instead of resolving these confusions, the government has opted for a shortcut by eliminating the evidentiary power of written evidence of land formerly owned by indigenous communities through GR 18/2021. The legal implications of GR 18/2021 in land registration can be briefly illustrated in the following table.

Table 1. The legal implications of GR 18/2021 in land registration

Aspect	Before GR 18/2021	After GR 18/2021
Evidentiary Power	Written evidence of land formerly owned by indigenous communities had significant evidentiary power.	Written evidence is reduced to a clue and cannot serve as proof of ownership.
Land Registration Process	Community could use various forms of evidence, including Letter C, *Girik, Petuk, Kekitir* and similar documents for land registration.	Letter C, *Girik, Petuk, Kekitir* and similar documents can only serve as clues, not as primary evidence.
Data Synchronization	Efforts to synchronize data among institutions were ongoing but inconsistent.	Lack of clarity in evidence may exacerbate data synchronization issues.
Legal Certainty	Greater legal certainty for land rights based on existing evidence.	Reduced legal certainty for land rights, leading to potential disputes.

Source: Research Data.

Based on the above, it can be understood that there has been a significant shift in the status of written evidence of land formerly owned by indigenous communities in land registration in Indonesia following the enactment of GR 18/2021. Previously, written evidence of land formerly owned by indigenous communities could serve as proof; currently, its strength has been reduced to merely serving as a clue in land registration. As a result, this written evidence can only be utilized in land registration through the mechanism of rights acknowledgment and does not possess any evidentiary value.

Resolution of Land Ownership Disputes with Written Evidence of Land Formerly Owned by Indiginious Communitied after the Enactment of Goverment Regulation No. 18 of 2021

The National Land Agency (Badan Pertanahan Nasional/BPN) and the Adjudication Committee play a crucial role in the land registration process in Indonesia, which is part of the government's efforts to ensure legal certainty regarding land rights that are classified as rechtscadaster. Rechtscadaster means that it is solely for the purpose of land registration and only addresses what rights exist and who the owners are, rather than for other purposes such as taxation (Oe, 2015). In carrying out its role, BPN is responsible for implementing land policy, including the collection, processing, and presentation of physical and legal data related to land (Azisah et al., 2024). Physical data includes information about land boundaries, area, and location, while legal data encompasses the legal status of the land, the rights attached to it, and any existing encumbrances. In cases where the registration process is conducted systematically, the function of verifying and validating this data is performed by the Adjudication Committee, which is established by BPN. Thus, BPN and the Adjudication Committee should act as guardians of the validity and accuracy of land data, which serves as the basis for the issuance of legally recognized land rights certificates.

The crucial role of BPN in the land registration process in Indonesia is unfortunately not matched by optimal performance and a transparent system, leading to frequent errors in data collection and verification. For example, there have been cases of overlapping ownership rights between community rights and building use rights involving corporations, such as Building Use Right Certificate No. 1/Bindu issued in 2002 in the name of PT Perkebunan Mitra Ogan, which originated from state land (Shafiyah, 2023). In 2013, a Land Ownership Certificate (SHM) was issued in the name of Ali Kasim for a total area of 16,360 m², which overlapped with Building Use Right Certificate No. 1/Bindu. Furthermore, in 2019, in the village of Lubuk Rukam, there were 7 Community Land Ownership Certificates (Surat Hak Milik/SHM) that overlapped with Building Use Right Certificate No. 1/Bindu, with a total overlapping area of 38,489 m². The total area of overlapping land amounts to 54,849 m², with the majority of the overlapping SHM certificates issued under the PTSL program (Shafiyah, 2023).

Furthermore, in several other cases, there have been reports of discrepancies between the physical data and the legally recognized land data, such as differences in the measured area of land in the field compared to what is stated in official documents. This leads to land disputes between legitimate owners and other parties claiming rights to the same land. Additionally, the lack of transparency in the land registration process can foster public suspicion regarding the integrity of the National Land Agency (BPN). This lack of transparency is evident, for example, in the time and costs associated with the land registration process. The average time required to issue a certificate can take up to eight months, not to mention the relatively high costs involved (Qorib, 2014).

Based on the above, BPN should not only perform its administrative duties but also take more substantive actions. As a government organizer, BPN should uphold the principles of good governance as mandated by Law No. 30 of 2014 on Government Administration. These principles include legal certainty, utility, impartiality, accuracy, non-abuse of authority, transparency, public interest, and good service. Given its significant role and responsibility in land law in Indonesia, BPN needs to have integrated authority with various other institutions and agencies to facilitate the land registration process. However, in reality, there are still many land disputes arising within the community due to errors in the land registration process.

In the event of errors in the certificate issuance process as a right to land, a mechanism for certificate cancellation can be implemented in accordance with the status of the certificate as a strong piece of evidence, rather than an absolute piece of evidence. Article 29 paragraph (1) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No. 21 of 2020 concerning Handling and Resolution of Land Cases (ATR/BPN Minister Regulation 21/2020) states that the cancellation

of a certificate, which is one of the decisions of the State Administrative Officer in the field of land, can be carried out for two reasons: administrative defects and/or legal defects, or to implement a court decision that has permanent legal force. Article 64 paragraph (1) of GR 18/2021 states that the cancellation of land rights due to administrative defects can only be carried out within five years from the date the certificate was issued or due to overlapping certificates. Additionally, there are several other causes for the cancellation of land certificates due to administrative and/or legal defects as regulated in Article 35 of ATR/BPN Minister Regulation 21/2020.

In relation to the implementation of court decisions that have permanent legal force, the cancellation of a certificate as a decision of the State Administrative Officer in the field of land will be followed up if the ruling states that it is null and void/not valid/not legally binding/not enforceable in relation to the matters regulated in Article 38 paragraph (2) of ATR/BPN Minister Regulation 21/2020. In the context of certificate cancellation, the authority to cancel the certificate lies with the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency or the Regional Office of the National Land Agency, in accordance with their respective authorities.

In addition to the certificate cancellation mechanism, land dispute resolution can be pursued through out-of-court processes (non-litigation) or through judicial channels (litigation). The process of resolving land disputes outside the court, also known as Alternative Dispute Resolution (ADR), is characterized by cooperative conflict management, prioritizing deliberation to reach an agreement that is fair and meets the needs and interests of the disputing parties (win-win solution).

Article 1 number 10 of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution (ADR Act) states that ADR is an out-of-court dispute resolution institution pursued through procedures agreed upon by the parties, including consultation, negotiation, mediation, conciliation, or expert assessment. However, this law does not provide a detailed explanation regarding the definition or the procedures that must be followed in ADR.

Gunawan Widjaja, a lecturer at the Universitas 17 Agustus 1945 Jakarta, states that consultation is the provision of legal opinions by a party referred to as a consultant to a disputing party known as the client, conducted personally based on the needs and interests of the client in accordance with the provisions of the legislation (Isa et al., 2022). The results of the consultation are not binding on the client, allowing the client the freedom to decide whether to accept and use the provided opinion or not (Sanggit, 2021). Furthermore, negotiation is a communication action between the disputing parties acting as negotiators without the participation of a third party as an intermediary, aimed at resolving issues, managing conflicts, and creating a written agreement that must be implemented by the parties involved (Yanti and Djajaputera, 2024).

Unlike negotiation, mediation is conducted with the assistance of a neutral and impartial third party, known as a mediator, who is responsible for identifying the issues, offering options, and considering alternatives that the parties can pursue to reach an agreement (Boboy et al., 2020). According to Article 1 number 11 of ATR/BPN Minister Regulation 21/2020, mediation is facilitated by a mediator, which can be the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, the Regional Office of the National Land Agency, the Land Office according to their authority, and/or land mediators. The results of mediation that reach a peace agreement must be documented in a peace deed and registered with the District Court to obtain a peace ruling. Additionally, the implementation related to land administration must be submitted through an application to the Ministry, the Regional Office, or the Land Office according to their respective authorities.

Another option for Alternative Dispute Resolution (ADR) is conciliation, which involves the assistance of a conciliator as an active third party who helps the disputing parties by taking the initiative to formulate and outline steps for resolving the dispute (Sanggit, 2021).

However, the conciliator is only authorized to provide recommendations to the parties, making the implementation highly dependent on the decisions of the parties involved. The next option is expert assessment, which involves seeking opinions or evaluations from land experts regarding the dispute being experienced by the parties (Sanggit, 2021).

In addition to being resolved through Alternative Dispute Resolution (ADR), land disputes can also be pursued through the court route (litigation). The litigation process is characterized by an adversarial nature, where there is a process of mutually undermining opposing evidence (op tegenspraak) within the court's dispute resolution mechanism (Sahnan, 2015). Furthermore, the litigation process results in a decision that is beneficial to only one party (win-lose solution) (Asnawi, 2016). In land disputes, the issues at hand are not solely related to land ownership in civil matters but also involve the basis of rights or land documents in state administration, as well as actions that may constitute criminal offenses related to land (Risdiana, 2024). Therefore, the litigation process for resolving land disputes falls under the jurisdiction of two different judicial environments: the General Court, which handles civil and criminal cases, and the Administrative Court, which deals with the basis of rights or land documents issued by state officials (Sukmawati, 2022).

In principle, land disputes related to civil aspects are closely tied to the existence of land rights. The evidence presented in court aims to prove the ownership rights over a specific parcel of land. There is a possibility that the land recognized as the property of an individual was acquired through processes such as sale, gift, inheritance, or other legal actions. In this context, the court will issue a ruling that is either constitutive or declarative, providing clarification or determination regarding the legal relationship between an individual and the land that is the subject of the dispute (Risdiana, 2024).

Unlike civil cases, criminal cases in the context of land focus on proving the existence of crimes or offenses committed against and related to land rights. Furthermore, when categorized by timing, land-related criminal offenses can be divided into three types: pre-acquisition offenses, unlawful possession, and unauthorized claims (Sari et al., 2022). In this context, the court will issue a ruling that is condemnatory, as it includes criminal sanctions as punishment for the party found guilty of committing the offense.

In the scope of administrative land disputes, one example is the land certificate, which is a form of decision made by state administrative officials. Resolution in this case is conducted through the Administrative Court. Therefore, the court will examine the validity of the legal basis for land ownership. If there are procedural or substantive defects in the certificate as the basis for land ownership, the certificate must be annulled through the certificate cancellation procedure as regulated in Chapter V, Section Three of ATR/BPN Minister Regulation 21/2020.

In the evidentiary process taking place in both the General Court and the Administrative Court, written evidence of land formerly owned by customary rights can still be utilized. This aligns with the mandate of Article 96 paragraph (2) GR 18/2021, which states that written evidence of land formerly owned by customary rights can be used as an indication in the land registration process. This provision means that if no other evidence is found to demonstrate the legal relationship between an individual and the land they own, written evidence of land formerly owned by customary rights can still be used. Furthermore, this is also in accordance with the views of Nurhasan Ismail and Sarjita, who assert that written evidence of land formerly owned by customary rights can still be presented in court (Ismail and Sarjita, 2024).

.

CONCLUSION

GR 18/2021 stipulates that after five years from the enactment of this regulation, written evidence of land formerly owned by indigenous communities will be declared invalid and cannot be used as proof of land rights, serving only as a clue for land registration. This regulation clearly differs from GR 24/1997, which recognizes written evidence of land formerly owned by indigenous communities as valid proof of land rights. Nevertheless, if the community

encounters land disputes and only possesses rights based on written evidence of land formerly owned by indigenous communities, these disputes can be resolved through non-litigation mechanisms or litigation (criminal, civil, or administrative law), and the written evidence of land formerly owned by indigenous communities can still be used as proof in court.

REFERENCE

Andari, A. L. P., Hasanah, M. & Sumriyah. (2023). "Keabsahan Letter C Sebagai Alat Bukti Kepemilikan Tanah". Jurnal Hukum dan Sosial Politik 1(1): 187–198. http://dx.doi.org/10.59581/jhsp-widyakarya.v1i1.387.

Asnawi, N. (2016). Acara Perdata; Teori, Praktik, dan Permasalahannya di Peradilan Umum dan Peradilan Agama. Yogyakarta: UII Press.

Azisah, N., Lasatu, A., & Asriyan. (2024). "Sistem Pendaftaran Tanah di Indonesia dalam Perspektif Hukum Administrasi Negara". Jurnal Ilmu Hukum Aktualia 1(2): 71–85. https://jurnal.fakum.untad.ac.id/index.php/AKT/article/view/1196.

Boboy, J. T., Santoso, B., & Irawati. (2020). "Penyelesaian Sengketa Pertanahan melalui Mediasi berdasarkan Teori Dean G. Pruitt dan Jeffrey Z. Rubin". Notarius 13(2): 803–818. https://doi.org/10.14710/nts.v13i2.31168.

Isa, M. J. H., Zakiah, N., & Ruslan, F. F. A. (2022). "Non-Litigation Efforts In Land Acquisition Dispute Resolution". Jurnal Multidisiplin Madani 2(3): 1461-1476.

Isnaini & Lubis, A. A. (2022). Hukum Agraria: Kajian Komprehensif. Medan: Pustaka Prima.

Khoirunnisa, I., Putri, B. S., & Nikmah, N. L. (2024). "Hak Prioritas Terhadap Perolehan Tanah Negara Bekas Hak Eigendom". UNES Law Review 6(4): 12102–12109. https://doi.org/10.31933/unesrev.v6i4.

Marzuki, P. M. (2011). Penelitian Hukum. Jakarta: Kencana Prenada Media.

Masnadi, A. M. & Santosa, I. (2019). "Kepastian Hukum Terhadap Surat Girik Sebagai Dasar Bukti Pendaftaran Hak Atas Tanah". Jurnal Nuansa Kenotariatan 5(1): 29–36. https://doi.org/10.31479/jnk.v5i1.186.

Mayyasa, B. R., Navisa, F. D., & Suratma. (2024). "Letter C sebagai Alat Bukti Kepemilikan Hak atas Tanah dan Problematikanya terkait Program Pendaftaran Tanah Sistematis Lengkap (PTSL) Masal (Studi di Desa Pajangan, Kecamatan Sukodadi, Kabupaten Lamongan)". Dinamika 30(1): 9896-9906.

Muhaimin. (2020). Metode Penelitian Hukum. Mataram: Mataram University Press.

Muwahid. (2016). Pokok-Pokok Hukum Agraria di Indonesia. Surabaya: UIN Sunan Ampel Press.

Natadiarta, I. H., Sa'adah, N. & Lumbanraja, A. D. (2020). "Permasalahan Perbedaan Luas Tanah Antara Letter C dengan Hasil Pengukuran Pada Pendaftaran Tanah Pertama Kali". Notarius 13(2): 504–515. https://doi.org/10.14710/nts.v13i2.31070.

Nugroho, R. S., Suharno, & Dewi, N. (2023). "Pelaksanaan Pendaftaran Tanah Pertama Kali Dengan Alas Hak Letter C Desa Secara Jual Beli (Studi Kasus di Kantor Pejabat Pembuat Akta Tanah Kabupaten Boyolali)". Jurnal Bevinding 1(3): 34–43.

Nurwahid, T., Subekti, R., & Raharjo, P. S. (2023). "Keabsahan Alat Bukti Dalam Pendaftaran Tanah Menurut Peraturan Pemerintah Nomor 24 Tahun 1997". Jurnal Ilmiah Wahana Pendidikan 9(19): 781-782. https://doi.org/10.5281/zenodo.8418259.

Oe, M. D. (2015). "Tugas dan Fungsi Badan Pertanahan Nasional dalam Pendaftaran Tanah". Pranata Hukum 10(1): 62–74. https://doi.org/10.36448/pranatahukum.v10i1.155.

Palupi, A. R., Purwoatmodjo, D., & Prabandari, A. P. (2019). "Analisis Praktik Jual Beli Tanah yang Berstatus Letter C di Kecamatan Karanggayam Kabupaten Kebumen". Notarius 12(2): 848–960. https://doi.org/10.14710/nts.v12i2.29138.

Qorib, F. (2016). "Kendala Sertifikasi Tanah Masih Dialami Masyarakat". Hukum Online. https://www.hukumonline.com/berita/a/kendala-sertifikasi-tanah-masih-dialami-masyarakat-lt57eb8644a86a5/, diakses pada 2 Januari 2024.

Risdiana. (2024). "Praktik Penyelesaian Sengketa Pertanahan secara Litigasi". Jurnal Ganec Swara 18(2): 812–821. https://doi.org/10.35327/gara.v18i2.863.

Sadjarwo, I. H. H. (2020). "Keabsahan Bukti Lama Berupa Letter C Desa Dalam Kepemilikan Hak Atas Tanah". Notaire 3(1): 107-128. https://doi.org/10.20473/ntr.v3i1.19024.

Sahnan. (2015). "Pilihan Hukum Penyelesaian Sengketa Tanah di Luar Pengadilan (Studi Kasus Tanah Rowok, Lombok Tengah, NTB)". Mimbar Hukum 27(3): 404-417. http://dx.doi.org/10.22146/jmh.15879.

Sanggit, M. A. (2021). Analisis Penyelesaian Sengketa Tanah secara Non-Litigasi (Studi di Bale Mediasi Kabupaten Lombok Timur). Skripsi. Program Studi Ilmu Hukum Fakultas Hukum Universitas Muhammadiyah Mataram.

Sari, L., Rahawarin, A. R., & Abdullah, B. (2022). "Bentuk Perbuatan yang Merupakan Tindak Pidana di Bidang Pertanahan". Journal of Law Review 1(1): 25–40. http://dx.doi.org/10.55098/jolr.1.1.25-40.

Sibuea, H. Y. P. (2011). "Arti Penting Pendaftaran Tanah untuk Pertama Kali", Negara Hukum 2(2): 287–306. https://doi.org/10.22212/jnh.v2i2.218.

Soekanto, S. & Mahmudji, S. (2003). Penelitian Hukum Normatif, Suatu Tinjauan Singkat. Jakarta: Raja Grafindo Persada.

Suparyono, E. (2008). Kutipan Letter C sebagai Alat Bukti untuk Memperoleh Hak atas Tanah di Kecamatan Duren Sawit. Tesis. Magister Kenotariatan Fakultas Hukum Universitas Diponegoro.

Sukmawati, P. D. (2022). "Hukum Agraria dalam Penyelesaian Sengketa Tanah di Indonesia". Jurnal Ilmu Hukum Sui Generis 2(2): 89–95. https://doi.org/10.23887/jih.v2i2.1015.

Shafiyah, Z. A. (2023). Masalah Tumpang Tindih (Overlapping) Hak Milik Masyarakat Dengan Hak Guna Bangunan Perseroan Terbatas Perkebunan Mitra Ogan di Kabupaten Ogan Komering Ulu. Skripsi. Sekolah Tinggi Pertanahan Nasional.

Ulfah, M. (2022). "Perlindungan Hukum Terhadap Pemilik Hak Atas Tanah Akibat Terjadinya Sertipikat Ganda". Zaaken: Journal of Civil and Business Law 3(3): 327–352. https://doi.org/10.22437/zaaken.v3i3.

Yanti, C. & Djajaputera, G. (2024). "Analisis Efektifitas Non-Litigasi dalam Penyelesaian Sengketa Tanah". JIHHP: Jurnal Ilmu Hukum, Humaniora, dan Politik 5(1): 418–427. https://doi.org/10.38035/jihhp.v5i1.3192.

Yasin, M. (2022). "Legalitas Surat Keterangan Tanah yang Dibuat Kepala Desa dalam Sengketa Pertanahan". Hukum Online. http://www.hukumonline.com/stories/article/lt631c63ffef628/legalitas-surat-keterangan-tanah-yang-dibuat-kepala-desa-dalam-sengketa-pertanahan/, diakses pada 27 Desember 2024.