

## THE ROLE OF LAND DEED OFFICIAL REGARDING LEGAL CERTAINTY OF COMPLETE SYSTEMATIC LAND REGISTRATION

**Ricco Survival Yubaidi**

*Universiti Kebangsaan Malaysia  
riccoyubaidi@gmail.com*

### **Abstract**

As an acceleration program for land registration in Indonesia that is directly led by the President, Complete Systematic Land Registration (PTSL) should provide a guarantee of legal certainty and protection regarding land ownership rights. However, in fact, the role of the land deed official (PPAT), as a public official who receives a mandate from the Governmental Regulation no. 24 of 1997 regarding Land Registration, is not found within the implementation of PTSL. The present research aimed to investigate the role of PPAT in the implementation of PTSL. Using normative legal approach, this study employed literature study to collect the primary data. This research found that PPAT does not have any role in regulatory legislation regarding PTSL. If we see Governmental Regulation no. 24 of 1997, all transfers occurring after the issuance of the regulation requires PPAT's deed as written evidence of land ownership. The adjudication committee as the PTSL implementer supposes to collaborate with PPAT to make sure that PTSL meets the steps of juridical data collection in order to obtain an orderly, complete land registration that provides legal certainty regarding land ownership right.

*Pendaftaran Tanah Sistematis Lengkap (PTSL) sebagai program percepatan pendaftaran tanah di Indonesia yang dipimpin langsung oleh Presiden perlu memberi jaminan kepastian dan perlindungan hukum kepemilikan hak atas tanah. PTSL dalam hal ini ditugaskan kepada Panitia Adjudikasi yang berfungsi sebagai pelaksana PTSL menurut Peraturan Menteri Agraria/Kepala Badan Pertanahan Nasional. PPAT sebagai pejabat umum yang diberi amanat Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah pada faktanya tidak ditemukan perannya dalam pelaksanaan PTSL baik di dalam maupun di luar Panitia Adjudikasi. Penelitian ini bertujuan untuk mengkaji peran PPAT yang*

*ada dan seharusnya ada dalam pelaksanaan PTSL. Metode penelitian yang digunakan adalah penelitian hukum normatif dengan studi pustaka sebagai pengumpulan data primer. Hasil penelitian bahwa tidak ditemukan peran PPAT dalam peraturan perundangan PTSL. Apabila merujuk Peraturan Pemerintah Nomor 24 Tahun 1997 maka segala peralihan setelah lahirnya peraturan tersebut memerlukan akta PPAT sebagai bukti tertulis atas kepemilikan maupun peralihan hak tanah. Panitia Ajudikasi sebagai pelaksana PTSL seyogyanya melakukan koordinasi dengan PPAT untuk memastikan PTSL memenuhi tahapan penelitian data yuridis sehingga tercapai pendaftaran tanah tertib, lengkap dan memberi kepastian hukum terhadap kepemilikan hak atas tanah.*

**Keywords:** Land Deed Official, Land Registration, Complete Systematic Land Registration, Adjudication Committee

## Introduction

The Republic of Indonesia is a state of law, it upholds the law supremacy. This is reflected by the law enforcement and equality based on the 1945 Constitution.<sup>1</sup> The equality of land right ownership is one of the form of law enforcement mandated by article 33 paragraph 3 of the 1945 Constitution highlighting that “the land and the waters, as well as the natural riches therein, are to be controlled by the state to be exploited to the greatest benefit of the people.

The mandate is followed by the issuance of Law no. 5 of 1960 on Basic Agrarian Law stipulating that the state holds rights and authority to regulate and implement the appropriation, the utilization, the reservation, and the cultivation of that earth, water, and air space. This authority of regulation and administration is implemented through the land registration process. Land registration aims to provide legal certainty and legal protection to a holder of rights over a land parcel.

Land registration ensures legal certainty regarding land rights for all Indonesian people, especially those in the rural area who live as agrarian people.<sup>2</sup> To date, based on data from the Ministry of Agrarian and Spatial Planning/National Land Agency, there are only 67,837,038

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<sup>1</sup> Titik Triwulan Tutik, *Hukum Perdata Dalam Sistem Hukum Nasional* (Prenadamedia Group, Jakarta, 2008), p. 1

<sup>2</sup> Bambang Sugianto, “Pendaftaran tanah adat untuk mendapat kepastian hukum di Kabupaten Kepahiang”, *Jurnal Panorama Hukum*, vol. 2, no. 2 (2017), p. 134.

certified land parcels with the area of 39,829,560 Ha.<sup>3</sup> This number is still far from total land parcels in Indonesia, which is approximately 126 million land parcels.

It is believed that administering land rights can reduce land conflicts. Land conflict is a problem that always occurs, and it is an actual issue from time to time. Various land conflicts arise due to a range of factors such as the unequal distribution of agrarian resources utilization, expansion done by a certain group of people, and population density.<sup>4</sup> To conclude, land conflicts are closely associated with expeditious and fair land registration.

Land registration acceleration is a must. Thus, the Indonesian government has begun this initiative through a program called *Pendaftaran Tanah Sistematis Lengkap* (Complete Systematic Land Registration/PTSL). This program begins with the issuance of regulation of Minister of Agrarian Affairs and Spatial Planning of the Republic of Indonesia no. 6 of 2018 concerning PTSL. Prior to PTSL, land registration programs were only carried out in ministry levels, not in the higher governance levels (i.e., president). Whereas in PTSL, the president monitors, evaluates, or even directly handle the distribution of land certificate.<sup>5</sup>

The fundamental issue that should be noted in the implementation of PTSL is holistic understanding, considering that the ‘systematic’ procedure is different from the ‘sporadic’ procedure. The differences lie in the location of land registration, data collection, data processing, and budgeting to generate systematically registered land parcels. The output of the systematic land registration is not only a certificate, but also to register every land parcel in Indonesia’s territory, to improve the certificate, and to minimize land dispute.<sup>6</sup>

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<sup>3</sup> Kementerian Agraria dan Tata Ruang/Badan Pertahanan Nasional, “Statistik Sertifikat Hak Atas Tanah”, Available on <https://www.atrbpn.go.id/Publikasi/STATISTIK/Sertipikat-Hak-Atas-Tanah>, Accessed Des 20, 2019, accessed 10 March 2020

<sup>4</sup> Mukmin Zakie, “Konflik agraria yang tak pernah reda”, *Legality: Jurnal Ilmiah Hukum*, vol. 24, no. 1 (2017), p. 52

<sup>5</sup> Mukmin Zakie, “Konflik agraria yang...,” p. 52

<sup>6</sup> Septina Marryanti and Yudha Purbawa, “Optimalisasi Faktor–Faktor Yang Mempengaruhi Keberhasilan Pendaftaran Tanah Sistematis Lengkap”, *Bhumi: Jurnal Agraria dan Pertanahan*, vol. 4, no. 2 (2018), p. 202

The acceleration of PTSL is mandated to *Panitia Ajudikasi* (Adjudication Committee). This committee is appointed to carry out and to make sure that the product of PTSL can provide legal certainty for the community. Some functions of the adjudication committee are to collect physical and legal data of all land parcels and investigate the history of the land, and assess the validity of the land ownership evidence.

When I looked closer into the Regulation of Ministry of Agrarian Affairs and Spatial Planning no. 6 of 2018 on PTSL, I did not find the role and involvement of *Pejabat Pembuat Akta Tanah* (Land Deed Official /PPAT) in PTSL. While in the higher-level regulation (i.e., article 6 of Governmental Regulation no. 24 of 1997 on Land Registration), it is stated that in carrying out land registration, the head of Land Affairs Office is assisted by PPAT or other officials appointed to carry out certain activities in accordance with this governmental regulation and other relevant regulatory legislation. In other words, after the issuance of this Governmental Regulation no. 24 of 1997 on Land registration, any matter relating to land registration becomes a part of PPAT's responsibility as the assistant of Land Affairs Agency.

Based on the problems that have been described above, it is important to conduct a study on the role and involvement of PPAT in PTSL in order to provide a guarantee that the program is capable of land conflict and to achieve national purpose of providing legal certainty regarding land right ownership in Indonesia.

The method used in this study was categorized into normative legal research. This is also known as doctrinal legal research. Normative legal research functions to present legal argumentation when gap, uncertainty, and conflict of norm occur.<sup>7</sup> In this study, literature review was performed to collect primary data that consist of legislation, books, journals, and dictionary.

### **Number of Uncertified Lands**

Land registration is a constitutional mandate for the government; however, in practice, many problems still occur. Despite the regulation and stipulation has been clear, there are many people that do not understand the importance of land registration. One of the regulations

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<sup>7</sup> Djulaeka & Devi Rahayu, *Buku Ajar Metode Penelitian Hukum* (Surabaya: Scopindo Media Pustaka 2019), p. 20.

is the Governmental regulation no. 24 of 1997 on Land Registration. The state's indecision in providing legal equity and certainty regarding land rights ownership is shown by a negative-but-positive-tended publication system applied in land registration in Indonesia. Besides, Adat law recognizes that land sale-purchase activity based on two principles, "*Tunai*" and "*Terang*" principle.

Transfer of right due to uncertified land transaction is deemed valid if such transactions have met the material requirements namely "*Tunai*" and "*Terang*".<sup>8</sup> Although it is stated that these principles require good faith, uncertainties still exist regarding the importance of land registration for the community. This condition leads to hindrances regarding land registration initiatives among the community. People hold various understandings, most of them think that by meeting "*Tunai*" and "*Terang*" principles, the administrative process of land registration and the land right certificate could be neglected.

A case study conducted by Arie Hardian investigated problems regarding registration of rights over uncertified land, the study found two types of problems, internal and external problems.<sup>9</sup> The study found that the external problems cover: incomplete right base, land dispute, lack of understanding of the importance of land registration, Exhaustion due to the complex procedure, land right transfer that is not done before PPAI and is not registered to the National Land Affairs Office of Medan City.

Ana Silviana conducted another case study in Notog village, Patikraja district, Banyumas Regency.<sup>10</sup> The study revealed that 99% of the people know and understand about land registration and function of the land certificate. However, their knowledge is not followed by behaviours and attitudes of filing land registration. They tend to passively wait for National Agrarian Operation Project (PRONA) and think that having SPPT/PBB (Notification of Land and Building Tax due) as land ownership evidence. Based on the two studies above, it

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<sup>8</sup> Baiq Henni Paramita Rosandi, "Akibat Hukum Jual Beli Hak atas Tanah yang Belum Didaftarkan," *Jurnal IUS Kajian Hukum dan Keadilan*, vol. 4, no. 3 (2016), p. 434.

<sup>9</sup> Arie Hardian, "Jual Beli Tanah Yang Belum Bersertipikat Dan Pendaftarannya Menurut Peraturan Pemerintah Nomor 24 Tahun 1997", *Jurnal Notarius*, vol. 3, no. 2 (2017), p. 43.

<sup>10</sup> Ana Silviana, "Kajian Tentang Kesadaran Hukum Masyarakat dalam Melaksanakan Pendaftaran Tanah", *Pandecta: Research Law Journal*, vol. 7, no. 1 (2012), p. 121.

could be concluded that the land registration procedure in Indonesia is time-consuming and tends to be ignored either by the community or the community.

From an administrative perspective, a robust and valid land right ownership evidence is in the form of a land certificate issued by an authorized official, in this case, is the land affairs office.<sup>11</sup> Uncertified land, of course, adversely affects legal certainty regarding land right ownership. Uncertified land may lead to land conflicts such as dual certificate, execution due to non-performing loans, inheritance, and other legal actions involving rights over land.

### **Problems of Complete Systematic Land Registration**

Land registration is "*recht-kadaster*" in nature, meaning that it ensures legal certainty. Article 1 paragraph 1 of Governmental Regulation no. 24 of 1997 on Land Registration defines land registration as "a series of activities conducted by the Government on an ongoing basis and in an orderly manner which comprise the collection, processing, recording, presentation, and maintenance of physical and juridical data in the form of maps and registers concerning land parcels and apartments, including the issuance of right-evidencing documents for land parcels on which rights have been established and for apartment ownership rights as well as for the encumbrances thereon."

In order to register every land parcel in Indonesia, as mandated by article 19 of Law no. 5 of 1960 on Basic Agrarian Law, the government, performs land registration acceleration program through PTSL, it is targeted that in 2025, all land parcels in Indonesia will have been certified. The object of PTSL covers all land parcels in Indonesia. The objects include land parcels with border marker and those without border marker (which will be determined during PTSL activities).

The implementation of PTSL has experienced a number of regulation changes, from Regulation of Minister of Agrarian Affairs/ Head of National Land Affairs Agency no. 35 of 2016 concerning Acceleration of Implementation of Complete Systematic Land Registration, which was amended by Regulation of Minister of Agrarian Affairs and Spatial Planning/Head of National Land Affairs Agency

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<sup>11</sup> Siti Malikhatun Badriyah, "Problematika Pembebanan Hak Tanggungan Dengan Objek Tanah Yang Belum Bersertipikat", *Masalah-Masalah Hukum*, vol. 45, no. 3 (2016), p. 176.

no.1 of 2017. These two regulations were then no longer in force since the issuance of Regulation of Minister of Agrarian Affairs and Spatial Planning/Head of National Land Agency no. 6 of 2018 on Complete Systematic Land Registration and Presidential Instruction no. 2 of 2018 on Acceleration of Complete Systematic Land Registration in entire Indonesia's Territory.

The presidential instruction no. 2 of 2018 state that PTSL is mandated to 14 elements of the government, namely Minister of Agrarian Affairs and Spatial Planning/Head of National Land Agency, Minister of Environment and Forestry, Minister of Public Works and Public Housing, Minister of Home Affairs, Minister of State-Owned Enterprises, Minister of Finance, Minister of Villages, Development of Disadvantaged Regions, and Transmigration, Indonesian National Police Chief, Attorney General of the Republic of Indonesia, The Head of National Public Procurement Agency, Head of National Institute of Aeronautics and Space, The Head of Geospatial Information Agency, Governors, and Regents/City Mayor.

Within the instruction, the president specifically assigns the Minister of Agrarian Affairs and Spatial Planning/Head of National Land Agency to (1) administer a land registration activity that is complete and systematic, generating an output with three criteria, (2) issue regulation and take steps to accelerate PTSL during land ownership-evidencing, (3) make/prepare/ revise regulation regarding time to announce physical and legal data in order to accelerate the accomplishment of PTSL. (4) communicate the output of PTSL to the One Map Policy acceleration team to strengthen the foundation of One Map Policy. (5) regularly evaluate, monitor, and report the implementation of Presidential Instruction to the President of the Republic of Indonesia.

Continuity between the presidential instruction no. 2 of 2018 and Regulation of Minister of Agrarian Affairs/ Head of National Land Agency no. 6 of 2018 is questionable, considering that it turns out that there are differences regarding the output of PTSL. The Presidential Instruction states that the output is in the form of three clusters, namely: (1) Cluster 1 for land parcels that meet requirements for certificate issuance, (2) Cluster 2 for land parcels that are only recorded in the land book since it does not meet the requirements for certificate issuance due to dispute, (3) Cluster 3 for land parcels that are only registered in

the land register because it does not meet the requirements for certificate issuance because the object or the subject does not meet requirements for obtaining land rights in PTSL.

In contrast, Regulation of Minister of Agrarian Affairs/ Head of National Land Agency states that the output of PTSL consists of four clusters: (1) Cluster 1 for land parcels with legal and physical data that meet requirements for certificate issuance, (2) Cluster 2 for land parcels with legal and physical data that meet requirements for certificate issuance, yet are being the object of dispute, (3) Cluster 3 for land parcels with physical and legal data that do not meet requirements to be recorded and certificate issuance because the subject/the object of the right has not satisfied certain requirement stipulated in this Regulation, and (4) Cluster 4 for certified land parcels with registered object and subject, both those that have not been mapped or those that have been mapped yet do not fit the field condition or experience physical changes. This difference will, of course, affect the outcome of PTSL, which will be used as a database for land registration.

The implementation of PTSL is done by establishing *Panitia Ajudikasi* (Adjudication Committee). Based on the regulation of Minister of Agrarian Affairs/ National Land Agency on PTSL, the head of Land Affairs Office establishes and assigns Adjudication Committee. This committee consists of: (1) A Head, officiated by an officer of Land Affairs Office, (2) Vice-head for physical matters, officiated by an officer of Land Affairs Office who understand land infrastructure matters, (3) Vice-head for legal matters, officiated by an officer of Land Affairs Office who understand the legal relationship of lands, (4) A secretary, officiated by an officer of Land Affairs Office, (5) Village Head, and (6) Members from Land Affairs Office.

The scope of PTSL consists of four issues, namely the administration of PTSL, the implementation of PTSL activities, the settlement of PTSL and funding. The implementation of PTSL activities is done in the following steps: (1) Planning, (2) Determining location, (3) preparing, (4) establishing PTSL adjudication committee and task force, (5) Socialization, (6) collecting physical data and legal data, (7) Studying the legal data for right-evidencing, (8) Announcing the physical and legal data as well as its validation, (9) Affirming the conversion, claims and granting of right, (10) registering right, (11)

issuing land right certificate, (12) Documenting and delivering the output, and (13) reporting.

Each output of PTSL is presented by Minister of Agrarian Affairs and Spatial Planning/Head of National Land Agency to One Map Policy Acceleration team to strengthen the database of One Map Policy. One Map Policy is one of the priority programs in *Nawa Cita*. Through this policy, development plan, infrastructure, permit issuance, and land right, and various national policy could be made based on accurate spatial data.<sup>12</sup>

The adjudication committee is assisted by Taskforces for physical, legal, and administrative matters. The taskforce for physical matters consists of ministerial state civil apparatuses, Temporary employee/non-ministerial employee, Licensed cadastral surveyor, and Licensed cadastral assistant surveyor.

The taskforce for physical matters consists of ministerial state civil apparatuses, Temporary employee/non-ministerial employee, Village officers, Community organization, *Babinsa*, *Bhabinkamtibmas*, and/or other community elements. The taskforce for physical matters consists of ministerial state civil apparatuses, Temporary employee/non-ministerial employee.

PTSL Adjudication committee holds some functions, namely, collecting physical data and original documents of the legal data of all land parcels in its region and deliver the document receipt to the right holder, assisting to fulfill the required evidence of land ownership/tenure in accordance with the regulatory legislation, checking the validity of the physical and legal data of the evidence of land ownership or tenure, and announcing the physical and legal data of collected land parcels.

Adjudication committee, as stipulated in the Ministerial Regulation, holds a huge responsibility and consequences of maximizing the function of PTSL in minimizing land disputes. With regard to legal data collection, the taskforce for legal matters carries out its function based on the regulation. The standard, criteria, method, procedure, and

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<sup>12</sup> Kementerian Koordinator Bidang Perekonomian Republik Indonesia, “siaran pers peluncuran geoportalsatu peta final”, <https://www.ekon.go.id/berita/download/4440/3056/11.12.2018-siaran-pers-peluncuran-geoportalsatu-peta-final.pdf>, accessed 7 February 2019.

mechanism of collecting, processing, presenting and maintaining legal data and documents adhere to the regulatory legislation.

The legal data collection includes collecting evidence regarding land ownership/tenure, either written evidence and witness' statements. This activity is done by collecting and checking the history of land ownership stated in *Risalah Penelitian Data Yuridis* (Minutes of Research on Legal Data). Taskforce for legal matters should be careful in collecting ownership evidence. One of the potential problems may occur if PTSL implementation for the old right is merely proven by written statement on ownership and/or physical tenure of a land parcels (as governed in Regulation of Minister of Agrarian Affairs and Spatial Planning/ Head of National Land Agency no. 6 of 2018 on Complete Systematic Land Registration), while there is another party who claims the land parcel and has a PPAT deed as an evidence of land right transfer, which is classified as strong written evidence (as governed in Governmental Regulation no. 24 of 1997 on Land Registration).

Alternative solution to solve legal and implementation problems is the strengthening of the legal basis of PTSL implementation using governmental regulation. This can be done by revising/ amending governmental regulation no. 24 of 1997 on Land Registration and/or issuing specific governmental regulation on PTSL, thus, PTSL could be higher than Minister Regulation with regard to degree of law. It is possible to apply due to two principles: First, *Lex Specialis Derogat Legi Generali*, meaning that specialized law overrides the general regulation and the stipulations within the general law still apply unless specifically regulated in the specialized law. Second, *Lex Superior Derogat Legi Inferior*, meaning that higher regulation overrides the lower ones.<sup>13</sup>

### **The Role of PPAT and Legal Certainty of Land Registration**

Transaction of uncertified land that is done after governmental regulation no. 24 of 1997 on Land Registration should be proven by a deed of sales and purchase made by or before a PPAT. When it is done without that deed, the sale and purchase process should be repeated using deed made by PPAT. This should be done to meet the requirement and stipulation so that the transfer of land right can be

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<sup>13</sup> Dian Aries Mujiburohman, "Potensi Permasalahan Pendaftaran Tanah Sistematis Lengkap (PTSL)", *Bhumi: Jurnal Agraria dan Pertanahan*, vol. 4, no. 1 (2018), p. 100.

registered and obtain strong evidence (i.e. certificate).<sup>14</sup> Article 103 paragraph 3 of Regulation of Minister of Agrarian Affairs/ Head of National Land Agency no. 3 of 1997 concerning the implementation of Governmental Regulation no. 24 of 1997 on Land registration stipulate that with regard to transfer of right over an uncertified land, one of the required documents is a deed made by PPAT about the legal action.<sup>15</sup> This is the reason why the implementation of PTSL needs PPAT deed as a legal data for land registration.

The transfer of right over an uncertified land should be proven by PPAT deed. In carrying out its function regarding the transfer of uncertified land, PPAT always implement prudential principle that is reflected in the PPAT's obligation to: a) check the land data in the local land affairs office, b) refuse a request of making a deed without formal data in the form of 1) The letter of evidence of the old right or a statement letter issued by village head stating that a person holds the land parcel for 20 years. 2) Statement letter stating that the land is uncertified, or for lands located far from the Land Affairs Office, the right holder's statement should be strengthened by that of the village head.<sup>16</sup>

Article 2 paragraph 1 of Governmental Regulation no. 37 of 1998, in conjunction with Governmental Regulation no. 24 of 2016 concerning Land Deed Official states that the main function of PPAT is to carry out a part of land registration activity by making a deed to prove that certain legal action has been done regarding land rights or ownership rights over an apartment unit, which is used as a basis for registering data changes on land registration.

Such legal actions are sale and purchase, exchange, grant, *inbreng*, sharing of common right, giving of Building Use Title, Encumbrance Right, or authority to encumber an encumbrance right.

The main function of PPAT in carrying out a part of land registration activities should not be seen as merely a deed-maker; instead, PPAT should be seen as a public official whose oath is taken to

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<sup>14</sup> Murni, Christiana Sri, "Peralihan Hak atas Tanah Tanpa Sertifikat", *Lex Librum: Jurnal Ilmu Hukum*, vol. 4, no. 2 (2018), p. 691.

<sup>15</sup> Hatta Isnaini Wahyu Utomo & Hendry Dwicahyo Wanda, "Prinsip Kehati-hatian Pejabat Pembuat Akta Tanah dalam Peralihan Tanah yang Belum Bersertifikat", *Jurnal Hukum Ius Quia Iustum*, vol. 24, no. 3 (2017), p. 486.

<sup>16</sup> Hatta Isnaini Wahyu Utomo & Hendry Dwicahyo Wanda, "Prinsip Kehati-hatian Pejabat...", p. 486

hold an important role in the community. The role means a set of behaviors expected to be held by an individual who possesses a function within the community. While community could be defined as a group of people bound by a certain culture.

The criteria of PPAT as an element of the interdependent community are reflected in article 32 paragraph 2 of Governmental Regulation no. 24 of 2016 concerning the Amendment of Governmental Regulation no. 38 of 1998 on the Function of Land Deed Official, it is stated that PPAT or temporary PPAT should provide a service without asking for a fee to the poor. Besides, PPAT is assigned to a certain area. The relationship between PPAT and its region leads to certain relationship between PPAT and the local community.

Sale and purchase activity is a process of right transfer that has existed since a long time ago; this activity is also governed by adat law by using a fundamental principle called “*Terang*” and “*Tuna*”. The former means that the sale-purchase activity should be done before an authorized public official. This authorized public official could be Adat Chief (for Adat lands), District Head (acts as PPAT for a region without PPAT), or PPAT, who is also a notary. The latter means that the sale-purchase should be done in cash. In other words, if the price has not been paid off, a sale-purchase process could not be done.<sup>17</sup> When there are PPAT and temporary PPAT in one region, only the PPAT (not the temporary PPAT) hold the authority to make the deed.<sup>18</sup>

In Presidential Instruction no. 2 of 2018 on the Acceleration of Complete Systematic Land registration in entire Indonesia’s territory, the president instructs the Minister of Agrarian Affairs and Spatial Planning/Head of National Land Agency to make a regulation and take steps to accelerate the accomplishment of PTSL. However, the evidencing process of land ownership and/or tenure should be in accordance with the prevailing rule as stipulated in article 23 and 24 of Governmental Regulation no. 24 of 1997 on Land Registration as *Lex Superior Derogat Legi Inferior* applies.

Within the PTSL process, during legal data collection activities, there are differences in old and new rights-evidencing. According to

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<sup>17</sup> Irma Devita Purnamasari, *Kiat-Kiat Cerdas, Mudah, Dan Bijak Mengatasi Masalah Hukum Pertanahan* (Bandung: Kaifa, 2010), p. 16.

<sup>18</sup> Herlina Ratna SN. “Kewenangan Pejabat Pembuat Akta Tanah Dalam Perjanjian Jual Beli Tanah”, *Keadilan Progresif*, vol. 6, no. 2 (2015). p. 101.

article 23 of Governmental regulation no. 24 of 1997, new right refers to rights granted since the governmental regulation no. 24 of 1997 on Land registration prevails, for land registration, the legal data is proven by the granting of right from an authorized official or the original deed made by PPAT. While old rights refer to rights over a land obtained from the conversion of land rights when Basic Agrarian Law (BAL) prevailed and unregistered rights according to Governmental Regulation no. 10 of 1961 on Land Registration.<sup>19</sup>

Article 23 explains that for right registration for new land rights, it is proven by (1) Right-granting from an official who is authorized to grant a right based on the prevailing stipulation if land is the state's land or land with the right to manage, (2) original PPAT deed containing right-granting by the right holder to the recipient, (3) Right to Manage, is proven by the granting of the right to manage by an authorized official, and (4) *waqf* pledge deed for *waqf* land. (5) Ownership right over an apartment unit is proven by the separation deed and (6) encumbrance right granting deed.

Article 24 explains that for rights registration, land rights resulting from old rights conversion are proven by written evidence, witnesses' information, and the person's statement which will be validated by the adjudication committee in the systematic land registration or by the Head of Land Affairs Office in sporadic land registration. Regarding old rights evidencing, one of the written evidence, as explained by article 60 paragraph 2 letter h of the Regulation of Minister of Agrarian Affairs/ Head of National Land Agency no 3 of 197 on the Implementation of Governmental Regulation no. 24 of 1997 on Land Registration, is the deed of land right transfer made by PPAT.

## Conclusion

Based on analysis of regulations (i.e., Presidential Instruction no. 2 of 2018 on Acceleration of Complete Systematic Land Registration in Entire Indonesia's territory and Regulation of Minister of Agrarian Affairs and Spatial Planning/ Head of National Land Agency of the Republic of Indonesia no. 6 of 2018 on Complete Systematic Land Registration), It was found that PPAT does not have a certain role in

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<sup>19</sup> Karina Gita Sahprada, *Pendaftaran Tanah Melalui Program Pendaftaran Tanah Sistematis Lengkap Di Kota Bandar Lampung*, Jurnal Ilmiah Hukum Administrasi Negara Fakultas Hukum Universitas Lampung, Vol. 5 No 1 2018, p. 7

the implementation of PTSL. The Adjudication committee of PTSL, as an organizational unit established by the Head of Land Affairs Office, is responsible for the implementation of PTS.

This committee consists of the Head, Vice-Head for physical matters, Vice-Head for legal matters, Secretary, Village head, and members who come from Land Affairs Office.

PPAT is still seen merely to carry out main functions stipulated in regulation on the function of PPAT (i.e., carrying out a part of land registration activities by making a deed as evidence that a certain legal action regarding land rights or rights over an apartment unit has been done, which is used as the basis for data changes due to legal action of sale-purchase activities, exchange, grant, *inbreng*, right distribution, granting of Building Use Title/ Land Use Title, granting of encumbrance right, and granting of authority to encumber an encumbrance right.

This committee should be able to make sure that the object of PTSL with criteria of new rights can be proven by a deed. This committee should coordinate with PPAT to make sure that a PTSL applicant has met the stages of legal data research for right-evidencing so that the implementation can be properly done and avoid potential conflicts in the future. The issuance of Governmental Regulation no. 24 of 1997 means that any form of land rights transfer and first-time land registration requires PPAT deed. This is mandated by the regulatory legislation stating that PPAT's main function is to provide legal certainty on new rights since the Governmental Regulation no. 24 of 1997 prevails.

The president, through presidential instruction no. 2 of 2018 on Acceleration of Complete Systematic Land Registration, instructs the Minister of Agrarian Affairs to make regulations and take steps to accelerate the accomplishment of PTSL within the evidencing process of land ownership and/or tenure. It is expected that for the steps for the acceleration of PTSL accomplishment, the adjudication committee can coordinate with the PPAT as an element of community and an assistant of Land Affairs Office in carrying out the land registration as mandated by the governmental regulation no. 24 of 1997 on Land registration. Thus an orderly, complete land registration that provide legal certainty regarding land rights in the entire territory of the Republic of Indonesia.

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