

## **Complete Systematic Land Registration Property in Requiring Legal Certainty and Justice**

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**Abstract:** This research aims to knowing, analyzing and discovering the nature of Complete Systematic Land Registration according to the Indonesian legal system, knowing, analyzing the negative Complete Systematic Land Registration system in realizing legal certainty and justice, knowing, analyzing and finding and affirming the factors that influence in realizing legal certainty and justice in the negative land registration system. This study uses a qualitative empirical juridical approach to descriptive by describing the problems associated with Complete Systematic Land Registration.

**Keywords:** Complete Systematic Land Registration, Legal Certainty, Legal Justice.

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### **I. INTRODUCTION**

The absence of legal certainty guarantees for land often triggers disputes and conflicts over land in various regions in Indonesia, apart from among the community, both between families, often land disputes between stakeholders (entrepreneurs, State-Owned Enterprises, and the government). This proves the importance of a certificate on land as proof of rights to the owned land.

The symbol of the land certificate issuance process has been the primary concern of the government. To overcome this problem, through the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, the government has found a solution as a national priority program in the form of Complete Systematic Land Registration Acceleration.

In fact, land disputes have started since the existence of differences in interests or differences in perceptions regarding land status between one person and another, including legal entities. Land disputes can be found anywhere, and in any country, including in Indonesia, these land disputes continue to increase in line with the increasing human need for land. In general, disputes that occur today are caused by:<sup>1</sup>

1. Legislation in the land sector has not been implemented consistently.
2. There is an overlap that regulates land with regulations related to the interests of other institutions.
3. Inadequate juridical and physical data on land.
4. There are many property developers competing for land/development sites.
5. The number of wrong transactions made by the stakeholders/government under the hands.
6. There is bad faith from the request and the power of attorney.
7. There is an overlapping authority to handle problems with government agencies

Disputes that occur in the land sector can cause prolonged conflicts between disputing community members, even to their heirs, which can cause many victims. It all started with questions about who had more rights to the land so that the parties competed to prove it.

In connection with the previous issue, it is increasingly felt that there is a need for legal certainty in order for every community to secure ownership of land rights. Furthermore, the community needs to register their land to obtain a land title certificate which serves as a vital tool for proof of ownership of land rights.

Guarantee of legal certainty of land rights is necessary to obtain justice in land tenure between various elements. The arrangement of land rights and trying to create legal certainty over land rights also seeks to create justice for land rights holders.

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<sup>1</sup>Syarief, E. (2012). *Menuntaskan Sengketa Tanah Melalui Pengadilan Khusus Pertanahan*. Jakarta: Kepustakaan Populer Gramedia, pp. 8-9.

## II. STATEMENT OF THE PROBLEM

1. What is the nature of Complete Systematic Land Registration in realizing legal certainty and justice?
2. How can Complete Systematic Land Registration contribute to legal certainty and justice?
3. What factors influence Complete Systematic Land Registration?

## III. THEORETICAL FRAMEWORK

### A. Theoretical Basis

#### 1. Legal System Theory

In this research, it is essential to know about law as a system. There is inevitably a discussion of the law as a system that aims to describe the socio-legal character under study so that the dependence between each part (legal society, legal culture, legal philosophy, law, the concept of law, the formation of laws, the form of law, application of the law, evaluation of the law and return to the legal community)<sup>2</sup> which forms a system (interrelationship between parts) in the discussion of the results of the research must be structured in a well and entire discussion unit.

If we consider that the socio-legal system is a separate system of interaction from the building of the sub-system to the system, which begins with individual actions (the self-social self-looking glass self-social action = law in action) which are intertwined, so that each sub-system has an integrity function towards legal phenomena, including the local legal system in this study.<sup>3</sup>

The theory used in this Grand theory is Systems Theory, which generally states that a system is a unit that operates with certain limits. The system can be mechanical, organic, or social.<sup>4</sup> The system is an arrangement of units, each of which does not stand alone but functions to form one unity.<sup>5</sup> Furthermore, Ludwig von Bertalanffy, said that “a system is a complex of interacting elements, where certain laws can be applied”.<sup>6</sup> Whatever characteristics we attach to the legal system, these characteristics are the same as those in any system or process. There is input, a process, output and feedback.<sup>7</sup>

#### 2. Legal Theory as a Tool of Social Change

Roscoe Pound's theory about tools of social change is related to the concept of law taught in historical school, where Friedrich Carl von Savigny argues that:<sup>8</sup>

*“The law is an expression of the will of the people (spirit of the people), it doesn't come from deliberate legislation but arises as a gradual development of common consciousness of the nation. A nation's legal system is greatly influenced by the historical culture and traditions of the people and the growth of law is to be located in their popular acceptance. The law should always conform to the popular consciousness i.e Volksgeist, therefore customs and historical tradition as a source of law not precede legislation but also is superior to it.”*

Suppose the legal concept of the historical flow above is linked to the legal theory as a tool of social change from the Roscoe Pound. In that case, it will indirectly find the features of legal theory as a tool of social change, as for its features, because it can solve social problems in society.<sup>9</sup>

#### 3. Legal Certainty Theory

A German legal philosopher named Gustav Radbruch teaches the existence of three basic ideas of law, which some legal theorists and legal philosophers identify as three purposes of the law, including justice, benefit and legal certainty.<sup>10</sup>

The existence of legal certainty in a country results in regulating the law in the laws and regulations set by the government.<sup>11</sup> Laws and regulations are not based on momentary decisions. Understanding the principle of law is to protect society from various crimes or harassment by individuals or groups. Therefore, laws and regulations must be guidelines for state administrators and be implemented properly not to harm anyone.

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<sup>2</sup>Rasjidi, L. & Putra, I. B. W. (2003). *Hukum Sebagai Suatu Sistem*. Bandung: CV. Mandar Maju, p. 60.

<sup>3</sup>Salman, O. (2007). *Kesadaran Hukum Masyarakat terhadap Hukum Waris*. Bandung: PT. Alumni, p. 44.

<sup>4</sup>Friedman, L. M. (2011). *Sistem Hukum: Perspektif Ilmu Sosial* (Khozim, M., Trans.). Bandung: Nusa Media, p. 6.

<sup>5</sup>Badudu, Y. & Zain, S. M. (2001). *Kamus Umum Bahasa Indonesia*. Jakarta: PT. Pustaka Sinar Harapan, p. 1377.

<sup>6</sup>Mustafa, B. (2003). *Sistem Hukum Indonesia Terpadu*. Bandung: PT. Citra Aditya Bakti, p. 5.

<sup>7</sup>Friedman, L. M. (2011). *Op. Cit.*, pp. 12-13.

<sup>8</sup>Pasamai, S. (2008). *Pengembangan Sistem Pengukuhan Penetapan Kawasan Hutan dari Aspek Hukum Penatagunaan Tanah*. Makassar: PT. Umitoha Ukhuwah Grafika, p. 36.

<sup>9</sup>Soekanto, S. (1985). *Perspektif Teoritis Studi Hukum dan Masyarakat*. Jakarta: Rajawali Pers, pp. 104-105; Rahardjo, S. (1986). *Ilmu Hukum*. Bandung: PT. Alumni, pp. 148-149.

<sup>10</sup>Ali, A. (2010). *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicialprudence): Termasuk Interpretasi Undang-Undang (Legisprudence)*. Jakarta: Kencana Prenada Media Group, pp. 292-293.

<sup>11</sup>*Ibid.*, p. 137.

Legal certainty is one of the main objectives of the law. For adherents of legal positivism, the law aims to achieve legal certainty. In the history of legal philosophy, it is known that the teachings of legalism have a very positivistic or legalistic view. Legalism views the law as the only source of law. Apart from the law, there is no law. Understanding emerged in the Middle Ages in line with the emergence of the codification of the law movement in Europe, aiming to guarantee legal certainty.<sup>12</sup>

#### **4. Theory of Justice**

According to Aristotle, justice gives everyone something that is their right (*unicuique suum tribuere*) and not harming others (*neminem laedere*). In his book entitled *Nicomachean Ethics*, Aristotle classified justice into two types, namely:<sup>13</sup>

a. Distributive justice is justice in terms of distributing wealth or other ownership to each member of society. Aristotle emphasized that distributive justice balances what a person gets (he gets) with what he deserves (he deserves).

b. Corrective Justice aims to correct unfair incidents in the relationship between one person and another. Justice here means the balance between what is given and what is received.

Regarding justice, John Rawls in his book *A Theory of Justice* argues that “*justice is the main virtue in social institutions, as is truth in the system of thought. As the prime virtues of humankind, truth and justice are inviolable*”.<sup>14</sup> Furthermore, Rawls said that:

*“There needs to be a balance, equality and harmony between private interests and the interests of society, including the State. Justice is a value that cannot be negotiated because only with justice can there be a guarantee of stability and tranquility in human life.”*

Baharuddin Lopa defines that “*justice which is being able to carry out virtue and leave (prevent) evil, justice is the balance between rights and obligations*”.<sup>15</sup> Meanwhile, John Rawls defines that “*justice as the main virtue in social institutions as well as in systems of thought*”.<sup>16</sup> According to him, that a theory, however elegant and economic it may be, must be rejected or revised. If it is not true, so are laws and institutions, no matter how efficient and neat, must be reformed or abolished if they are unfair.

Taking into account several notions of justice as quoted above, it can be concluded that justice always implies goodness and truth, either in judgment or in behavior or action. So, the word justice always implies virtue in it. Apart from containing the values of goodness and truth, in its implementation, it always aims to create a balance between rights and obligations so that the benefit of life both individually and collectively in society can be achieved.

Likewise, with the land registration system in Indonesia, the legal rules adopted should provide clear space for realizing legal certainty and justice guarantees for the people who have registered their land. Because in the implementation of law in society, it can be felt how the coveted justice is realized because it is clear that the law that lives in society can be felt injustice so that the law of fair land registration means a lot to the life of the nation and state.

#### **5. Utilitarianism Theory**

The theory of utilitarianism has received much attention from various legal experts such as John Stuart Mill (Jeremy Bentham’s student), John Rawls and other experts. John Stuart Mill argues that:<sup>17</sup>

*“Jeremy Bentham’s assumption is too naive, which assumes that there is no conflict between individual uses and general uses. Also, it is too superficial to think that humans are controlled by mere practical considerations of pleasure. If that is the way humans are, it is completely incomprehensible at all, why individuals curb their efforts to achieve happiness, for the benefit of others.”*

The linkage of this utilitarian legal theory to the legal system of land registration in Indonesia is explained in the purpose of land registration, namely in order to provide legal certainty and legal protection, which is implied in these provisions that there are benefits in land registration, apart from the advantages and disadvantages of the land registration system in Indonesia.

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<sup>12</sup>Mertokusumo, S. (2003). *Mengenal Hukum: Suatu Pengantar*. Yogyakarta: Liberty, p. 167.

<sup>13</sup>Fuady, M. (2007). *Dinamika Teori Hukum*. Jakarta: Ghalia Indonesia, p. 109.

<sup>14</sup>Rawls, J. (2006). *Teori Keadilan: Dasar-Dasar Filsafat Politik untuk Mewujudkan Kesejahteraan Sosial dalam Negara* (Fauzan, U. & Prasetyo, H., Trans.). Yogyakarta: Pustaka Pelajar, p. 3.

<sup>15</sup>Lopa, B. (1987). *Permasalahan Pembinaan dan Penegakan Hukum di Indonesia*. Jakarta: Bulan Bintang, p. 1.

<sup>16</sup>Rawls, J. (2006). *Op. Cit.*, pp. 3-4.

<sup>17</sup>Tanya, B. L., Simanjuntak, Y. N., & Hage, M. Y. (2007). *Teori Hukum: Strategi Tertib Manusia Lintas Ruang dan Generasi*. Surabaya: CV. Kita, p. 109.

## **6. Legal Protection Theory**

Legal protection has stages, namely legal protection is born from a legal provision and all legal regulations provided by the community, which are basically an agreement of the community to regulate the behavioral relationships between community members and between individuals and the government which are considered to represent the interests of the community.

Satjipto Rahardjo argues that:<sup>18</sup>

*“legal protection is to provide protection for human rights that have been harmed by others and that protection is given to the community so that they can enjoy all the rights provided by the law.”*

Philipus M. Hadjon argues that *“legal protection for the people is a government action that is preventive and repressive in nature”*.<sup>19</sup> Furthermore, preventive legal protection aims to prevent disputes that direct government actions to make decisions based on discretion. Repressive protection aims to resolve disputes, including their handling in the judiciary.<sup>20</sup>

In its implementation in people’s lives, sometimes the government takes government instruments that do not benefit the public interest because there are often partial interests. Policies that are evident in society but still validated in this country do occur quite a lot. However, there has never been any attempt to pay attention to the government towards the fate of the people whose lives are influenced by the policies they have rolled out.<sup>21</sup>

## **7. Ownership and Mastery Theory**

In terms of the concept of land rights, control has a significant and strategic role for the community because it determines the basis or basis for one’s ownership of land, as explained by Satjipto Rahardjo, that:<sup>22</sup>

*“Mastery is temporary until later there is certainty about its relationship with the goods under control. Is someone’s question that must be answered based on reality in the field without having to refer to legal certainty.”*

Mastery is a real relationship between a person and the goods in his power besides the fact that an item is under someone’s control. It is also necessary to question the inner attitude of the person concerned about the item under his control, namely whether there is a genuine intention to control and use it. The two elements are *corpus possidendi and animus possession*. Law enforcement officials cannot ignore this problem either. Even though the question of control is factual, the law is required to make decisions. When the law starts to enter, then he must decide whether someone will get legal protection or not.

## **8. Law Enforcement Theory**

The essence of law enforcement lies in harmonizing what is in the rules of some laws regarding the creation, maintenance and maintenance of peace in social life. Soerjono Soekanto argues that five factors, namely determine the main problem in law enforcement:<sup>23</sup>

- a. The law factor itself (laws and regulations);
- b. Law enforcement factors;
- c. Facility factors;
- d. Community factors; and
- e. Cultural factors.

## **9. Social Aspects Transformation Theory**

Regarding land registration law in Indonesia, it is necessary to pay attention to the developing social transformation, given the trend of economic development that is not accompanied by legal reforms that can keep pace with socio-economic development.

Legal development in land registration cannot be stagnant. However, it must always be dynamic because of the legal need in land registration which provides legal certainty and justice for the community becomes very important and urgent. So that in the future, there will be no more legal vacuum in the field of land registration.

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<sup>18</sup>Rahardjo, S. (1986). *Op. Cit.*, p. 54.

<sup>19</sup>Hadjon, P. M. (1987). *Perlindungan Hukum Bagi Rakyat di Indonesia: Sebuah Studi tentang Prinsip-Prinsipnya, Penanganannya oleh Peradilan dalam Lingkungan Peradilan Umum dan Pembentukan Peradilan Administrasi Negara*. Surabaya: PT. Bina Ilmu, p. 2.

<sup>20</sup>Alfons, M. (2015). *Implementasi Perlindungan Indikasi Geografis Atas Produk-Produk Masyarakat Lokal dalam Perspektif Hak Kekayaan Intelektual*. Mataram: CV. Pustaka Bangsa.

<sup>21</sup>Prasetyo, E. (2009). *Kebijakan Publik Tidak Memihak Rakyat*. Yogyakarta: Pusham UII, p. 16.

<sup>22</sup>Rahardjo, S. (1986). *Op. Cit.*, pp. 62-64.

<sup>23</sup>Soekanto, S. (1983). *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*. Jakarta: Rajawali Pers, p. 3.

## **10. Socio-Economic Theory**

Several factors can determine the level of socio-economic level in the community, including the level of education, type of work, level of income, environmental conditions of residence, ownership of wealth, and participation in group activities of the community.

It must be realized that the socio-economic factors of the community are pretty influential on community awareness in registering their land. So that the government also needs to pay attention to socio-economic factors in supporting the implementation of the objectives of land registration which are observed in the Law of the Republic of Indonesia Number 5 of 1960 on Basic Agrarian Regulations (hereinafter referred to as Law No. 5 of 1960), including the registration of all land parcels in the territory of Indonesia which is accompanied by the provision of legal certainty and justice guarantees for citizens who have registered their land rights.

Suppose the socio-economic life of the community is good. In that case, this will also greatly help carry out land registration throughout Indonesia by not depending on the burden or cost of registering land to the government anymore. The community has been able to register their land rights without assistance from the National or Regional Budget.

## **B. Purpose of Land Registration in Indonesia**

Land registration is a process of recording and providing information about land ownership, land use and ownership status. To ensure legal certainty of ownership of land rights, the Government carries out comprehensive land registration in Indonesia's territory. Moreover, to regulate this, the Government has established Law No. 5 of 1960, which entered into effect on September 24, 1960.

Law No. 5 of 1960 is the primary regulation governing the control, ownership, designation, use, and control of land use to implement the management and utilization of land for the greatest prosperity of the people. One of the aspects needed for this purpose is the certainty of land rights, which becomes the main foundation in providing legal certainty and legal protection and providing a sense of justice to land rights holders.

Based on Article 19 section (1) of Law No. 5 of 1960, regulates that “*to ensure legal certainty by the Government, land registration is held throughout the territory of the Republic of Indonesia according to the provisions stipulated in Government Regulations*”. The implementation of land registration activities is an obligation of the Government aimed at ensuring legal certainty that is *rechtscadaster* in nature. *Rechtscadaster* means for the purposes of land registration only and is only concerned with what rights and who owns it, not for other purposes such as taxation.<sup>24</sup>

Furthermore, based on Article 3 point a of Government Regulation of the Republic of Indonesia Number 24 of 1997 on Land Registration (hereinafter referred to as Government Regulation No. 24 of 1997), regulates that:

*“Land registration aims to provide legal certainty and protection to holders of rights over a parcel of land, apartment units, and other registered rights so that they can easily prove themselves as holders of the rights concerned.”*

Land registration protects the owner and functions from finding out the status of a plot of land, who owns it, what rights are it, how large is it, what is it used for, and so on.<sup>25</sup> Moreover, for the Mortgage with the registration of the agreement as a guarantee of the Mortgage, preference rights will be obtained for the creditor and the principle of publicity which protects the existence of the guarantee from the existence of a lawsuit from a third party.

Basically, the relationship between legal certainty of land rights and legal protection can be concluded that legal certainty is a means of obtaining legal protection.

## **C. Publication Principles of Land Registration Adheres Negative System with a Positive Tendency**

In general, the land registration system that applies in various countries is known to have two publicity systems, namely the positive publicity system and the negative publicity system. The positive publicity system means that the state fully guarantees the correctness of the data presented from the certificate, a land registration product. While the negative publicity system means The state does not guarantee the accuracy of the data presented in the certificate. Therefore, it is not confident that the person whose name is written on the certificate is absolute as the owner, so the state does not guarantee if another party is issuing the ownership of the certificate.

Based on the explanation of Article 32 section (2) of Appendix Government Regulation No. 24 of 1997, explains that:

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<sup>24</sup>Parlindungan, A. P. (1999). *Pendaftaran Tanah di Indonesia*. Bandung: CV. Mandar Maju, p. 13.

<sup>25</sup>Dalimunthe, C. (2000). *Pelaksanaan Landreform di Indonesia dan Permasalahannya*. Medan: FH USU Press, p. 132.

*“Land registration does not use a positive publication system, where the correctness of the data presented is guaranteed by the State, but uses a negative publication system. In the negative publication system, the State does not guarantee the correctness of the data presented. But even so it is not intended to use a purely negative publication system.”*

Regarding publication activities in the form of presenting data in the form of lists and maps, it is compiled by the National Land Agency. This information is intended as a basis for the community to take legal actions related to land registration.

Regarding the Indonesian land registration system that adopts a negative system, Boedi Harsono questioned how people could believe the truth of the data presented? To what extent do laws and regulations protect the interests of persons who in good faith take legal action regarding the rights they have registered? If based on the data presented or contained in the proof of the certificate of rights issued, and in the future, it turns out that the data is not correct.<sup>26</sup>

Because the publication system of land registration adopted by the State of Indonesia is a negative system with a positive tendency, in essence, everything listed in books and land certificates is valid as a strong proof of rights until it can be proven that condition is otherwise (incorrect). So that the legal force of a land title certificate as proof of land rights, the proof is not absolute because it can still be paralyzed by other evidence that can prove otherwise.

Several factors determining the birth of legal certainty can be grouped into juridical-normative, socio-juridical, and land policy bases. Both formally and materially, these factors play a significant role in the emergence of legal certainty of title to land that has received a certificate. This is consistent with the principle of *Nemo Plus Juris* that underlies the land registration system in Indonesia, which adheres to a negative system with a positive tendency. That is, the state does not guarantee the accuracy of the data obtained from the applicant for land rights from that data. However, the legal truth is determined by the judge in the court process.

#### **D. Legal Certainty of Land Rights Based on Laws and Regulations**

To provide legal certainty and legal protection for land rights holders, as based on Article 19 section (2) of Law No. 5 of 1960, regulates that the registration in section (1) of this article includes:

- a. measurement of land mapping and land books;
- b. registration of land rights and transfer of these rights;
- c. giving letters of proof of rights, which act as a strong means of proof.

Furthermore, based on Article 4 of Government Regulation No. 24 of 1997, regulates that:

- (1) To provide legal certainty and protection as referred to in Article 3 point a, the right holder in question is granted land rights.
- (2) To carry out the information function as referred to in Article 3 point b, physical data and juridical data from a parcel of land and apartment units which have been registered are open to the public.
- (3) In order to achieve administrative order as referred to in Article 3 letter c, each land parcel, land unit, and apartment unit including transfer, assignment and abolition of land parcels, and property rights of apartment units must be registered.

Legal certainty referred to in statutory regulations is the certainty of the subject and certainty of the object. The elements of legal certainty are related to the effectiveness of the law, which includes elements of legal structure, legal substance and legal culture in a society. Thus, the legal certainty of land ownership rights is determined by the law or the applicable land registration system and the understanding, attitudes, and benefits expected by the community from the land registration. Therefore, legal certainty regarding land ownership that still raises doubts for the certificate holder needs an intense study and analysis, especially about the community's social reality and legal awareness.

#### **E. Types of Rights and Control Over Land**

The right of the Indonesian people is the highest land tenure right and is the source of other land tenure rights, namely the right to control the state and individual rights over land.<sup>27</sup> The General Explanation of Appendix Law No. 5 of 1960, explains that:

*“This means that the earth, water and space within the territory of the Republic of Indonesia, whose independence is fought for by the nation as a whole, also become the rights of the Indonesian people, so they are not merely the rights of their owners. Likewise, land in the regions and islands does not merely belong to the indigenous people of the region or island concerned. With this understanding, the relationship between the*

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<sup>26</sup>Harsono, B. (2003). *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*. Jakarta: Djambatan, p. 87.

<sup>27</sup>*Ibid.*, p. 269.

*Indonesian nation and the land, water and space of Indonesia is a kind of customary rights relationship which is raised at the highest level, namely at the level which affects the entire territory of the State.”*

Furthermore, customary rights are a set of powers and obligations of a customary law community relating to land within the territory of the customary law community concerned. Customary law communities are the incarnation of all community members who have customary rights, not individuals. Powers and obligations accompany this customary right, including:<sup>28</sup>

1. Civil in nature, namely relating to joint ownership of land; and
2. Public nature, namely in the form of the task of authority to manage, regulate and lead the allocation, control, use and maintenance.

As for the types of land rights, as based on Article 16 section (1) of Law No. 5 of 1960, regulates that land rights as referred to in Article 4 section (1) are:

- a. Property Rights;
- b. Cultivation Rights;
- c. Building Rights;
- d. Right to Use;
- e. Lease Rights;
- f. Land Opening Rights;
- g. Rights to Collect Forest Products;
- h. Other rights which are not included in the aforementioned rights will be stipulated by law as well as temporary rights as mentioned in Article 53.

#### IV. DISCUSSION

##### A. Research Location Overview

The research location is in the Land Office of Makassar City and Jeneponto Regency. Based on data from the National Land Agency of Makassar City, the number of land parcels that have been certified is 184,425 land parcels with details of the certified land area 113,074,605 m<sup>2</sup> or around 65%, while the uncertified land area is 61,925,395 m<sup>2</sup> or around 35%.

**Table 1. Land Rights Certificate Sued at the State Administrative Court based on 2015-2019 Data from the National Land Agency of Makassar City**

No.	Year	Total
1	2015	21 Fields
2	2016	63 Fields
3	2017	32 Fields
4	2018	30 Fields
5	2019	35 Fields
<b>Total</b>		<b>181 Fields</b>

Source: Processed from Primary Data, November 2020

The data above shows that during 2015-2019, there were 181 land rights certificates published by the National Land Agency of Makassar City and were sued at the State Administrative Court.

**Table 2. Land Rights Certificate Sued at the General Court based on 2015-2019 Data from the National Land Agency of Makassar City**

No.	Year	Total
1	2015	282 Fields
2	2016	32 Fields
3	2017	50 Fields
4	2018	54 Fields
5	2019	61 Fields
<b>Total</b>		<b>479 Fields</b>

Source: Processed from Primary Data, November 2020

<sup>28</sup>*Ibid.*, p. 186.

The data above shows that during 2015-2019, there were 479 land rights certificates published by the National Land Agency of Makassar City and were sued at the General Court.

**Table 3. Land Rights Certificate Cancellation by Court Decision based on 2015-2019 Data from the National Land Agency of Makassar City**

No.	Year	Total
1	2015	10 Fields
2	2016	42 Fields
3	2017	8 Fields
4	2018	10 Fields
5	2019	292 Fields
<b>Total</b>		<b>362 Fields</b>

*Source: Processed from Primary Data, November 2020*

The data above shows that during 2015-2019, there were 362 land rights certificates published by the National Land Agency of Makassar City who was sued at the State Administrative Court and the General Court and canceled by Court Decision and has permanent legal force.

Based on data from the National Land Agency of Jeneponto Regency, where as many as 60,965 land parcels have been registered. Meanwhile, 172,436 land parcels have not been registered.

**Table 4. Land Rights Certificate Sued at the State Administrative Court based on 2015-2019 Data from the National Land Agency of Jeneponto Regency**

No.	Year	Total
1	2015	2 Fields
2	2016	- Field
3	2017	- Field
4	2018	1 Field
5	2019	2 Fields
<b>Total</b>		<b>5 Fields</b>

*Source: Processed from Primary Data, November 2020*

The data above shows that during 2015-2019, there were 5 land rights certificates published by the National Land Agency of Jeneponto Regency and were sued at the State Administrative Court.

**Table 5. Land Rights Certificate Sued at the General Court based on 2015-2019 Data from the National Land Agency of Jeneponto Regency**

No.	Year	Total
1	2015	4 Fields
2	2016	5 Fields
3	2017	5 Fields
4	2018	3 Fields
5	2019	5 Fields
<b>Total</b>		<b>22 Fields</b>

*Source: Processed from Primary Data, November 2020*

The data above shows that during 2015-2019, there were 22 land rights certificates published by the National Land Agency of Jeneponto Regency and were sued at the General Court.



**Table 6. Land Rights Certificate Cancellation by Court Decision based on 2015-2019 Data from the National Land Agency of Jeneponto Regency**

No.	Year	Total
1	2015	0 Field
2	2016	0 Field
3	2017	0 Field
4	2018	0 Field
5	2019	0 Field
<b>Total</b>		<b>0 Field</b>

*Source: Processed from Primary Data, November 2020*

The data above shows that during 2015-2019, there were 0 land rights certificates published by the National Land Agency of Makassar City who was sued at the State Administrative Court and the General Court and canceled by Court Decision and has permanent legal force.

**B. The Essence of Complete Systematic Land Registration in Achieving Legal Certainty and Justice**

Complete Systematic Land Registration (CSLR) is a land registration system regulated in Government Regulation No. 24 of 1997 and Regulation of Minister of Agrarian Affairs and Spatial Planning/National Land Agency of the Republic of Indonesia Number 6 of 2018 on Complete Systematic Land Registration, as a derivative of Law No. 5 of 1960, which regulates everything about the rights and obligations of legal subjects on land.

In the context of realizing legal certainty and justice in the land sector, the government has launched a national strategy program, namely CSLR. In addition to ensuring legal certainty and justice, CSLR is very important because it is the beginning of the process for the birth of proof of legal and binding ownership rights, namely Land Rights Certificate as a form of Government Decree as granting and/or affirming community land rights.

CSLR One of the objectives is land registration which is carried out village by village in regencies and sub-districts by the village in urban areas, covering all land parcels throughout the territory of the Republic of Indonesia.

CSLR can reduce and prevent land disputes and conflicts because its implementation is carried out in a programmed manner that involves the surrounding community as the applicant, land boundary neighbors, and the local government. Therefore, the boundaries of ownership for each plot of land become clear. Besides, ownership disputes can be detected early because of the openness and transparency of information on land rights ownership.

Land registration is essential to guarantee legal certainty, which leads to the legal protection of land rights holders. Thus, land certificates are significant evidence for legal subjects on land, so it is very naive if Government Regulation No. 24 of 1997 requires witness evidence in carrying out the land issuance process because, according to the author, the witness evidence has a very lightweight and is prone to the risk of error. If an event has occurred for a long time, then it is not uncommon that what happened cannot be remembered in its entirety.

The legal action of land registration is a significant event because it involves a person's civil rights. Civil rights are human rights that must be upheld and respected by other human beings to create peace in society.

At the time of land registration, the person's legal relationship with the land is announced to third parties or the general public to provide an opportunity. Since then, the third party is deemed to know the legal relationship between the person and the land concerned. At the same time, he becomes bound and obliged to respect this as an obligation that arises from propriety.<sup>29</sup> Based on Article 32 section (2) of Government Regulation No. 24 of 1997, regulates that:

*"In the event that a land parcel has been issued a certificate legally in the name of the person or legal entity who acquired the land in good faith and actually controlled it, then the other party who feels that he has rights to the land can no longer demand the exercise of that right if, within time 5 (five) years after the issuance of the certificate, there is no written objection to the certificate holder and the Head of the Land Office concerned or does not submit a lawsuit to the Court regarding control of the land or the issuance of the certificate."*

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<sup>29</sup>Effendie, B. (1982). *Kumpulan Tulisan Tentang Hukum Tanah*. Bandung: PT. Alumni, p. 46.

The above provisions aim to ensure certainty in the procedure and mechanism for registration and issuance of certificates under the provisions of laws and regulations not to be rechallengeed at the State Administrative Court. However, they have to sue in the District Court regarding civil cases that have been harmed by persons and legal entities whose certificates have been registered and issued to maintain and control their land. As for the five years stipulated in this article, it is a time duration that is still too long. The time should be shortened, considering that the National Land Agency has implemented transparency by using a computerized system. So that everyone anywhere and anytime can see information about a plot of land easily and quickly.

On the other hand, the above provisions should be contained as an Article in the Law so that its existence can be more binding on Judges in making decisions.

The problem of implementing Article 32 section (2) of Government Regulation No. 24 of 1997 lies in the fact that if the plaintiff is the actual owner of the land, but on the other hand, the certificate holder does not have good faith. The real problem is the defeated party filing a lawsuit against whom? The registration system used in the negative system does not regulate this because the state does not provide compensation to the injured party, nor is there an institution that provides funds (insurance) that explicitly compensate such losses.

However, Article 32 section (2) of Government Regulation No. 24 of 1997 is a step forward in addressing the weaknesses of the negative registration system because this Government Regulation provides guarantees and certainty for holders of land title certificates. Besides, other elements that should not be forgotten are the officials involved in providing instructions or evidence as a condition for the issuance of a certificate. For example, officials in the local urban village only provide proof of girik, which is used as a basis for landowners to carry out the certificate issuance process. Meanwhile, in the application process for certificate issuance, the National Land Agency only processes land title certificates based on documents or files legitimate. Suppose this article is genuinely applicable, provided that the community is aware of this rule to motivate them to issue certificates as proof of their rights so that other parties do not contest their land. In that case, the certainty of a CSLR will be well realized.

**Table 7. Community Response regarding Complete Systematic Land Registration**

No.	Statement	Frequency	Percentage
1	Very Satisfied	41	82
2	Less Satisfied	7	14
3	Dissatisfied	2	4
<b>Total</b>		<b>50</b>	<b>100</b>

*Source: Processed from Primary Data, November 2020*

The table above shows that the community response to the implementation of the negative system of CSLR is very satisfied and needs to be considered for continued implementation in all villages, urban villages, and sub-districts because land title certificates are very much needed in improving their economic business apart from ensuring their rights. A certificate with a CSLR is not as complicated as sporadic land registration, but rather is easy, fast, transparent and free of charge and then carried out in bulk in a planned, measured and orderly manner.

#### **D. Complete Systematic Land Registration Can Contribute to Achieving Legal Certainty and Justice**

CSLR is directed towards achieving it in an integrated manner (*rechts cadastare* and *rechts fiscale*) to provide certainty of rights and certainty of taxation on community land, facilitating land parcels' guarantee as certificates of land title as collateral.

With this land registration, a person can quickly obtain information regarding a piece of land, such as what rights he has, how large it is, where is it, whether he has been encumbered with mortgage rights or not. Thus the implementation of the registration of land rights, which is carried out based on the provisions of Law No. 5 of 1960, Government Regulation No. 24 of 1997, and Regulation of Minister of Agrarian Affairs and Spatial Planning/National Land Agency No. 6 of 2018 is by using the principle of publicity and the principle of speciality. The principle of publicity is reflected in publication with juridical data on land rights such as the subject of rights, what is the name of the right, transfer and assignment. While the principle of speciality is reflected in physical data on land rights such as how much land is the land, where is the land, and clear designation of the boundaries of the land..

**Table 8. Guarantee of Legal Protection in the Negative System of Complete Systematic Land Registration**

No.	Statement	Frequency	Percentage
1	The is Guarantee of Legal Protection	23	46
2	There is no Guarantee of Legal Protection	22	44
3	Don't Know	5	10
<b>Total</b>		<b>50</b>	<b>100</b>

Source: Processed from Primary Data, November 2020

The data above illustrates that there are still many respondents who state that the negative system of CSLR can realize legal protection guarantees. However, not a few also think that the negative land registration system does not provide legal protection. The rest say they do not know.

As an alternative solution, the government should consider implementing positive publicity in land registration as adopted by many Anglo-Saxon countries in a positive land registration system. The State guarantees the ownership of land rights granted, as the actual rights owner can still file a lawsuit in court if he can prove his ownership through a judicial decision that has permanent legal force. The State will provide compensation in the amount of the land which is the object of the dispute. So in a positive system, the guarantee of a sense of justice is felt because both parties to a dispute will receive equal treatment by the State.

Despite this, the application of a positive system of land registration. Besides, being careful in the land registration process requires the latest technology to implement land registration and costs a lot. However, it is a fundamental need for society, and this is in line with the mandate of Article 19 of Law No. 5 of 1960.

**E. Factors Influencing Complete Systematic Land Registration in Achieving Legal Certainty and Justice.**

**1. Influence of Social Aspects**

The social aspect is an aspect that is influenced by the level of public education. This education is influenced by the knowledge obtained by the community either through education or obtained independently. Individual experiences also influence this. The more experiences a person has, the greater their knowledge because they learn from experience. Likewise, with a person's education level, the higher a person's education level, the broader his/her insight.

If the community realizes the importance of registering their land rights and the benefits obtained from registering their land rights, the purpose of land registration mandated by Law No. 5 of 1960 will be realized. Of course, this cannot be separated from the influence of the social aspects of society because the higher the level of education of the community, the more also high legal awareness to register their land rights.

**Table 9. Influence of Social Aspects in Complete Systematic Land Registration**

No.	Statement	Frequency	Percentage
1	Affects	27	54
2	Less Influential	12	24
3	Has no Affect	8	16
4	Doubt	3	6
<b>Total</b>		<b>50</b>	<b>100</b>

Source: Processed from Primary Data, November 2020

Based on the data above, it can be seen that most of the respondents stated that the social aspect of the level of education affects people's interest in registering their land in a CSLR.

Participation in land matters related to the intellectual level of society is an issue raised from empirical phenomena where there are indications that community groups actively involved in land activities are educated or at least illiterate. The form of participation in this issue can be seen in land registration and land certification. It can be understood that the administration of land registration, incredibly sporadically, requires knowledge, awareness, and courage to administer it because dealing with the CSLR adjudication committee requires active communication.

**2. Influence of Economic Aspects**

The most dominant economic aspect is the level of income or income of the community. Besides, the economic growth of an area is also influential. In urban communities whose primary jobs are civil servants and the private sector, they have a higher and higher income than rural communities, who generally work as farmers.

So that in urban communities, most of the fulfillment of their essential needs has been fulfilled. It is very different from rural communities with low incomes, so they feel that land certification is not a basic need that must be fulfilled. People with low-income levels where they can only meet physiological needs feel less interested in certifying their land, considering the cost is not cheap.

**Table 10. Influence of Economic Aspects in Complete Systematic Land Registration**

No.	Statement	Frequency	Percentage
1	Affects	35	70
2	Less Influential	10	20
3	Has no Affect	3	6
4	Doubt	2	4
<b>Total</b>		<b>50</b>	<b>100</b>

*Source: Processed from Primary Data, November 2020*

The data above shows that most respondents stated that the economic aspect influenced the community to register their land. The high tax imposition of BPHTB land has reduced public interest in certifying land. The average interest of rural communities in certifying their land is not as high as in urban areas.

The economic growth of an area is marked by the entry of investors to invest their capital so that the regional economy grows and develops. For example, the entry of developers or investors for housing development, especially in urban areas, causes people to be more willing to certify their land, in addition to legal certainty, to increase the value of their land and with certificates of motivation or interests that affect the need to certify land. Community participation is strongly influenced by the motives or interests of the community itself.

### 3. Influence of Legal Cultural Aspects

**Table 11. Influence of Legal Cultural Aspects in Complete Systematic Land Registration**

No.	Statement	Frequency	Percentage
1	Affects	32	64
2	Less Influential	14	28
3	Has no Affect	4	8
4	Doubt	0	0
<b>Total</b>		<b>50</b>	<b>100</b>

*Source: Processed from Primary Data, November 2020*

The data above shows that most of the respondents stated that the legal culture aspect influenced the community to register their land. For example, the community will try to register their land parcels to issue a certificate if the land is to be sold. This is done because if the land that is owned has not been certified, it is likely that the land will not be sold or sold at a relatively low price. Therefore they try to register their land because there is an interest in selling the land.

### 4. Influence of Legal Legality

The legal legality aspect is the main objective of land title certificates. People need the legality of their land ownership for security purposes because the land is an asset whose value is continuously increasing and an object prone to disputes. The importance of land certification is in the context of providing clarity and legal certainty of land ownership. This importance is related to its benefits.

The legality aspect of land registration will certainly provide legal certainty on the one hand and justice on the other. In the sense of legality, justice is a quality that is related not to the content of a positive legal system. However, with its application, the orientation of the idea of justice implies that any dispute, including land rights disputes, must be resolved with the orientation of justice, not coercion. In settlement of land rights certificate disputes, it requires resolution in optimal ways to bring a dispute resolution problem based on justice.

**Table 12. Influence of Legal Legality Aspects in Complete Systematic Land Registration**

No.	Statement	Frequency	Percentage
1	Affects	30	60
2	Less Influential	15	30
3	Has no Affect	4	8

4	Doubt	1	2
<b>Total</b>		<b>50</b>	<b>100</b>

Source: Processed from Primary Data, November 2020

The data above shows that most of the respondents stated that the legality aspect affects the community to register their land because they think that if the land regulation can provide legal certainty and justice, they will register their land rights. This is also confirmed by Land Office officials who were interviewed directly, stating that the legality of land ownership is very much determined by law enforcement and land law enforcement, of course, starting from the existence of legal rules that can provide certainty and justice. In contrast, the existing land law regulations do not provide legal certainty and justice.

Based on the description above, it turns out that the legal principle that can provide legal certainty of land rights stipulated in legislation that produces legal products in the form of land title certificates. The implementation process and the benefits to be obtained are determined by implementing a positive and mutually supportive relationship between decision-makers and the community so that consistency is created in achieving legal objectives as expected by all levels of society.

Legal certainty, which is the objective of land registration, must be realized from the organizer of the registration of land rights based on the prevailing laws and regulations. Therefore, the legal certainty of land registration is inseparable from written law and unwritten law according to social realities developing in society.

CSLR is part of the land registration system as regulated in Government Regulation No. 24 of 1997. In the process, a certificate as a CSLR product must meet the minimum standard requirements, which cover the completeness of primary and secondary document requirements, is also carried out quite carefully and accurately in the bookkeeping process, starting from planning, preparation, implementation, evaluation and submission of results from the adjudication committee to the Head of the Land Office.

## V. CONCLUSION

1. The essence of Complete Systematic Land Registration according to the Indonesian legal system is in order to provide limited legal assurance and certainty because the Complete Systematic Land Registration system in the laws and regulations uses a negative system with a positive tendency meaning that the State does not provide guarantees regarding the accuracy of the data presented. Land certificates issued are partially valid means of proof. In fact, this is not the case considering the negative publication system, which still provides opportunities for other people to sue and cancel the validity of the Land Rights certificate.
2. The contribution of Complete Systematic Land Registration in providing legal certainty and providing a sense of justice for landowning communities has been felt the benefits after receiving a certificate due to Complete Systematic Land Registration. However, it still needs to be continuously improved and implemented until all land parcels can be registered and certified.
3. Factors that influence legal certainty and justice in a complete systematic land registration system are social aspects (community education level), economic aspects (community income levels), legal cultural aspects (level of legal knowledge and community habits), and aspects of legal legality.

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