



Regulation of Transfer of Land Rights in Indonesian and Uzbekistan Civil Law: Philosophical Analysis of the Concept of Legal Certainty

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Abstract

Introduction: The regulation of land rights transfer constitutes a vital instrument in realizing legal certainty and the protection of civil rights within society. Indonesia and Uzbekistan exhibit fundamental differences in their legal systems and traditions of land governance, which directly influence the manner in which legal certainty is established. Indonesia, through the Basic Agrarian Law of 1960 and Government Regulation Number 24 of 1997, adopts a negative land registration system with a positive tendency, while Uzbekistan, under the Land Code of 1998, declares land as state property administered under a national cadastre system emphasizing strict administrative registration.

Purposes of the Research: The purpose of this study is to analyze and compare the regulation of land rights transfer in Indonesia and Uzbekistan by examining its implementation in light of legal certainty and civil law principles.

Methods of the Research: This research employs a normative juridical method with a comparative legal and philosophical approach, particularly drawing upon the theory of legal certainty.

Results Main Findings of the Research: The findings reveal that Indonesia continues to face weaknesses in formal legal certainty due to the non-absolute nature of its land registration system, which instead prioritizes the protection of subjective rights and substantive justice. Conversely, Uzbekistan enforces formal legal certainty through its cadastre system, yet tends to overlook substantive justice and the principle of consensualism. The novelty of this research lies in its philosophical analysis situating both countries within the comparative framework of legal certainty in civil law, thereby offering new discourse on the necessity of harmonizing legal certainty and substantive justice in the regulation of land rights transfer.

Keywords: Land Rights Transfer; Civil Law Principles; Philosophical Analysis; Legal Certainty.

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INTRODUCTION

Land is one of the resources that holds a fundamental position in human life, not only as a means of fulfilling economic needs but also as a social and political identity.¹ In a legal context, land is the primary object of protection because it concerns ownership rights

¹ Supriyono and Putri Maha Dewi, "Eksplorasi Filosofis Mengenai Dasar Pembuktian Hak Tanah Dalam Hukum Agraria Indonesia | Journal of Innovation Research and Knowledge," *Journal Of Innovation Research And Knowledge* 4, no. 4 (2024): 2359-66, <https://bajangjournal.com/index.php/JIRK/article/view/8582>.

recognized by both the state and society.² The issue of regulating land rights has always been an important one, especially when it is related to the transfer of rights, whether through buying and selling, inheritance, grants, or other methods regulated by law.³ Legal certainty in the transfer of land rights is a key pillar that determines justice and public order, so a clear, transparent, and accountable legal system is needed. Without a guarantee of legal certainty, the potential for agrarian conflicts will increase, which in turn can disrupt social stability and economic development.⁴

Various countries have established different land law systems according to their respective historical, political, and cultural backgrounds. The civil law system in Continental Europe, for example, has greatly influenced the regulation of land rights in countries that were once under colonial influence. Indonesia, with its Dutch legal heritage, adopted the principle of land registration that is of a negative publication nature.⁵ Through the 1960 Basic Agrarian Law, Indonesia places land as a natural resource controlled by the state for the greatest prosperity of the people.⁶ Meanwhile, Uzbekistan, as a post-Soviet country, developed a land law system with a constitutive approach rooted in the socialist legal tradition. Uzbekistan maintains the principle that land is state property,⁷ and residents only have usage rights or long-term rental rights.⁸ This fundamental difference has philosophical consequences for the concept of legal certainty, because on the one hand Indonesia recognizes individual ownership with certain limitations, while Uzbekistan emphasizes state dominance as the absolute owner of land. Thus, a comparative analysis between the two systems provides a broader understanding of how legal certainty is articulated in two different legal regimes.

Legal certainty is closely related to the formulation of a policy in legal norms, whether in the form of decisions (*beschikking*) or regulations (*regeling*).⁹ Legal certainty is a fundamental principle in the philosophy of law that assumes the existence of definite rules, clear norms, and consistent application.¹⁰ Legal philosophy places certainty as an important element alongside justice and expediency.¹¹ In the context of the transfer of land rights, legal certainty means that every individual who acquires rights to a plot of land must be confident

² Reynaldi B Ndeo et al., "Peran Status Hukum Tanah Dalam Menjamin Perlindungan Masyarakat Di Wilayah Bantaran Waduk," *Almufti Jurnal Sosial Dan Humaniora* 2, no. 1 (2025): 30-39, <https://almufti.com/index.php/ASH/article/view/429>.

³ Anisa Nurul Hidayah, Asep Guntur Hidayat, and Tryola Nadiaa, "Peralihan Hak Atas Tanah," *Jurnal Ilmu Multidisiplin* 3, no. 1 (2025): 295-305, <https://doi.org/10.53935/JIM.V3.I1.53>.

⁴ Gigih Satrio Pamungkas, Glory Agnesia Hutaauruk, and Reza Fathurrahman, "Membedah Kebijakan Pemerintah: Strategi Menuntaskan Konflik Pertanahan Demi Keadilan Yang Berkelaanjutan," *JIIP - Jurnal Ilmiah Ilmu Pendidikan* 8, no. 1 (2025): 26-37, <https://doi.org/10.54371/JIIP.V8I1.6508>.

⁵ Mohammad Firdaus Syahputra, Bintara Tamtama Putra, and Alvin Dwi Arianto, "Perbedaan Kebijakan Pendaftaran Tanah Di Indonesia, Malaysia Dan Singapura: Efektivitas Dan Tantangannya," *Jurnal Multidisiplin Ilmu Akademik* 2, no. 1 (2025): 348-61, <https://doi.org/10.61722/JMIA.V2I1.3334>.

⁶ Ledy Wila Yustini, "Analisis Status Yuridis Ruang Angkasa Sebagai Objek Hukum Agraria Berdasarkan Undang-Undang Pokok Agraria Dengan UUD 1945," *Audi Et AP : Jurnal Penelitian Hukum* 4, no. 02 (2025): 257-66, <https://doi.org/10.24967/JAEAP.V4I02.4198>.

⁷ Abdunazarov Oybek Abdumutlibovich, "Reforms In The Field Of Land Relations Regulation In Uzbekistan," *Web of Teachers: Inderscience Research* 3, no. 6 (2025): 283-87, <https://webofjournals.com/index.php/1/article/view/4835>.

⁸ Zafar Kurbanov, Nodir Djanibekov, and Thomas Herzfeld, "Land Property Rights and Investment Incentives in Movable Farm Assets: Evidence from Post-Soviet Central Asia," *Comparative Economic Studies* 67, no. 2 (2025): 396-425, <https://doi.org/10.1057/s41294-024-00251-z>.

⁹ Hananto Widodo and Fradhana Putra Disantara, "Problematik Kepastian Hukum Darurat Kesehatan Masyarakat Pada Masa Pandemi COVID-19," *Jurnal Suara Hukum* 3, no. 1 (2021): 197, <https://doi.org/10.26740/jsh.v3n1.p197-226>.

¹⁰ Renaldy Afriyanto et al., "Eksistensi Asas Kepastian Hukum, Kemanfaatan Hukum Dan Keadilan Hukum Sebagai Tujuan Hukum Di Indonesia Dalam Perspektif Para Filsuf," *Unizar Law Review* 7, no. 2 (2024): 203-11, <https://doi.org/10.36679/ULR.V7I2.80>.

¹¹ Yusrizal Hasbi et al., *Filsafat Hukum*, ed. Novianti Pratiwi, Cetakan Pertama (Lamongan: Detak Pustaka, 2025).

that those rights are recognized, respected, and protected by the state.¹² Without legal certainty, land transactions are prone to disputes, reduce public trust, and have the potential to hinder economic development.

Indonesia regulates the transfer of land rights through a registration system managed by the National Land Agency,¹³ with land certificates serving as strong proof of ownership. This system is based on the principle of negative publication with a positive tendency, meaning that the certificates issued by the state are authentic evidence but can still be contested if there is other, more valid evidence.¹⁴ From a philosophical standpoint, this system demonstrates a balance between legal certainty and the protection of aggrieved parties. On one hand, the certificate provides assurance to its holder, but on the other hand, the law still allows for corrections if there are violations in the process of acquiring the rights. Thus, Indonesian land law attempts to uphold legal certainty that is not absolute, but still provides room for substantive justice.

In contrast to Indonesia, Uzbekistan adopts a system where the land remains state-owned, and individuals are only granted usage rights or lease rights that must be registered in the national cadastre system.¹⁵ This registration has a constitutive nature, meaning that rights are not recognized without official registration. The philosophy behind this system is rooted in the socialist view that land is communal property managed by the state for the collective interest, not for private ownership.¹⁶ Therefore, legal certainty in the Uzbekistan system lies in the state's administrative guarantee of land use rights, not in the recognition of individual ownership. The certificate of land use right or lease right issued by the state cadastre serves as a legal instrument to ensure that each transaction has legal force and does not cause disputes in the future.¹⁷

The fundamental difference between the two countries has implications for the interpretation of the concept of legal certainty in legal philosophy. In the Indonesian system, legal certainty is oriented towards guaranteeing rights holders that their land cannot be challenged except through legitimate legal mechanisms. Meanwhile, in the Uzbekistan system, legal certainty is understood as the state's consistency in regulating, distributing, and supervising land use in accordance with national development policies. In other words, in Indonesia, legal certainty emphasizes the aspect of protecting individual rights, while in Uzbekistan, legal certainty is rooted in the certainty of state administration. Both are equally important, but reflect different philosophies in balancing the interests of individuals and the state.

A clear and transparent land registration system is very important for economic development, especially in relation to access to credit and investment.¹⁸ In Indonesia, land

¹² Budi Salim, "Kepastian Hukum Yang Berkeadilan Terhadap Hak Individu Pada Penyelesaian Sengketa Tanah Dalam Mewujudkan Kesejahteraan" (Universitas Kristen Indonesia, 2024).

¹³ Siti Maryam Nasir, "Tanggung Jawab Badan Pertanahan Nasional Dalam Penyelesaian Sertifikat Tanah Ganda Di Kabupaten Gorontalo," *SINERGI: Jurnal Riset Ilmiah* 1, no. 11 (Nov2024): 1106-16, <https://doi.org/10.62335/FEHFBR12>.

¹⁴ Agus Suhariono et al., "Sistem Publikasi Pendaftaran Tanah (Kajian Sistem Publikasi Negatif Bertendensi Positif)," *Notaire* 5, no. 1 (2022): 17, <https://doi.org/10.20473/ntr.v5i1.21882>.

¹⁵ Abdumutlibovich, "Reforms In The Field Of Land Relations Regulation In Uzbekistan."

¹⁶ Chen Weida, "Socialist Public Ownership," in *Dictionary of Contemporary Chinese Economics*, ed. Hong Yinxing (Singapore: Springer Nature Singapore, 2025), 132-34, https://doi.org/10.1007/978-981-97-4036-9_70.

¹⁷ R. S. Toshboyeva, "Digital Technologies in the National Cadastre System of Uzbekistan: Issues of Legal Regulation," *Journal of Digital Technologies and Law* 2, no. 3 (2024): 544-64, <https://doi.org/10.21202/jdtl.2024.28>.

¹⁸ Devitri Widayastuti and Merline Eva Lyanthi, "Pendaftaran Tanah Sistematis Lengkap (PTSL) Kepemilikan Atas Tanah," *Journal Evidence Of Law* 3, no. 2 (2024): 228-37, <https://doi.org/10.59066/JEL.V3I2.748>.

certificates can be used as collateral for loans at banking institutions, thus making a major contribution to the community's economic activities.¹⁹ This confirms that legal certainty over land not only impacts the protection of civil rights but also has significant economic dimensions. Meanwhile, in Uzbekistan, registered lease rights or usage rights can also be used as a basis for accessing credit.²⁰ although within a more limited scope compared to property rights in Indonesia. From a philosophical standpoint, this difference illustrates how the legal system strives to balance the need for legal certainty and the economic policy orientation of the state.

Based on the aforementioned description, a comparative study regarding the regulation of land rights transfer in Indonesian and Uzbek civil law becomes important to conduct. A philosophical analysis of the concept of legal certainty in both systems can enrich the understanding of how law functions not only as a technical rule but also as a philosophical instrument that reflects a nation's worldview. By examining the differences and similarities between Indonesia and Uzbekistan, it is hoped that new perspectives can be gained in understanding the dynamics of land law, as well as contributing to the development of a more comprehensive legal theory. Based on the background description above, the problem formulation in this research is as follows: 1) How are land rights transfer arrangements in Indonesia and Uzbekistan?; 2) Are the regulations on the transfer of land rights in Indonesia and Uzbekistan in line with civil law principles that guarantee legal certainty?

Several studies have been conducted regarding the regulation of land rights transfers. *First*, research conducted by Robiya S. Toshboyeva *Journal of Digital Technologies and Law* focuses on the object of study of the national cadastre system in Uzbekistan by highlighting legal issues arising from the application of digital technology. This research uses a normative juridical method combined with policy analysis, thus being able to critically examine the legal basis and regulations that support cadastre digitization. The results of the research indicate that the application of digital technology in the Uzbek cadastre system is able to improve land data accessibility and strengthen transparency, but there are still legal gaps in accommodating such rapid technological developments. Toshboyeva emphasizes that regulatory harmonization is needed so that digital implementation not only facilitates administration but also guarantees the protection of people's rights. Toshboyeva emphasizes more on the technical regulatory aspects in the digital cadastre system of Uzbekistan, while this research philosophically examines the concept of legal certainty in the transfer of land rights through a comparison between the civil law systems of Indonesia and Uzbekistan.²¹

Second, research by Demi Rahayu Saputri, et al., in *Harapan Education Law Society Journal* focuses on the object of study of the land registration system in Indonesia, emphasizing the legal certainty provided by land certificates. This research uses a normative juridical method with a conceptual approach and regulatory analysis, thus emphasizing the positive legal framework that applies in Indonesia. The results of the research indicate that land certificates do provide strong evidence as a form of legal certainty, but their implementation

¹⁹ Abdul Azzis Azzis and Chaikal Nuryakin, "Analisis Kepemilikan Sertifikat Tanah Terhadap Akses Pinjaman Rumah Tangga," *Jurnal Kebijakan Ekonomi* 18, no. 2 (2025): 70-85, <https://doi.org/10.7454/jke.v18i2.1153>.

²⁰ Abdurashid Altiev, "Regulation Of The System Of Use Of Land," *Research in: Agricultural & Veterinary Sciences* 7, no. Special Issue (2023): 87-99.

²¹ Toshboyeva, "Digital Technologies in the National Cadastre System of Uzbekistan: Issues of Legal Regulation."

still faces obstacles in the form of overlapping land data, weak integration of digital systems, and land mafia practices that threaten certainty for rights holders. Demi Rahayu Saputri et al. recommend a thorough overhaul of the land registration system, both in terms of regulations and technical implementation, to truly realize the expected legal certainty. The research by Demi Rahayu Saputri, et al. only highlights the Indonesian context, while this research conducts a comparative philosophical analysis of Indonesia and Uzbekistan, so its focus is broader and deeper in examining legal certainty over the transfer of land rights.²²

The novelty of this research lies in the effort to integrate the philosophical analysis of the concept of legal certainty with a comparative study of the civil law systems of Indonesia and Uzbekistan. Toshboyeva's research focuses more on digital transformation in the Uzbek cadastre, and Saputri's research and her colleagues focus on legal certainty through land certification in Indonesia. This research occupies a unique position by connecting the two in a legal philosophy perspective. The approach in this research offers a more comprehensive understanding of how two different legal systems – one recognizing individual ownership and one promoting usage rights under state control – embody legal certainty in the transfer of land rights. Thus, this research not only answers normative questions but also makes a theoretical contribution to the development of the concept of legal certainty in the context of comparative civil law.

The purpose of this research is to analyze and compare the regulation of land rights transfer in Indonesian and Uzbek civil law, emphasizing the concept of legal certainty philosophically. This research is directed at identifying how the two countries, with different historical backgrounds and legal systems, build a land law framework to ensure the protection of people's rights and provide legal certainty in every land transaction. In addition, this research aims to reveal fundamental differences in normative and philosophical approaches between Indonesia, which recognizes individual ownership of land, and Uzbekistan, which places land entirely as state property. Thus, this research is expected to provide a more comprehensive understanding of the dynamics of land law in a comparative perspective, while also offering a theoretical contribution to the development of the concept of legal certainty in modern civil law.

METHODS OF THE RESEARCH

The research method used in this study is normative legal research with a comparative law approach and a philosophical approach. Normative legal research was chosen because the main focus of the study is on legal norms governing the transfer of land rights in Indonesia and Uzbekistan, both as stated in laws and derivative regulations. The comparative law approach is used to see the similarities and differences in the legal systems of the two countries, so that a more comprehensive understanding of how the concept of legal certainty is constructed can be obtained. Meanwhile, the philosophical approach is used to examine the meaning of legal certainty in depth, not only limited to the normative aspect but also from the perspective of the values of justice, benefit, and certainty itself. With a combination of these three approaches, this research is expected to provide a complete picture of the problems and uniqueness of the land law system in both countries. The data

²² Demi Rahayu Saputri et al., "Mewujudkan Kepastian Hukum Melalui Pendaftaran Tanah Di Indonesia," *Jurnal Masyarakat Hukum Pendidikan Harapan* 5, no. 02 (2025), <https://jumas.ourhope.biz.id/ojs/index.php/JM/article/view/102>.

processing technique used in this research is carried out through literature study which includes the collection of primary, secondary, and tertiary legal materials. Primary legal materials include laws and regulations in force in Indonesia such as the Basic Agrarian Law and land regulations, as well as laws and regulations in Uzbekistan related to the cadastre system and land use rights. Secondary legal materials consist of literature, books, journals, and scientific articles that discuss land systems, legal certainty, and legal philosophy. Meanwhile, tertiary legal materials are obtained from legal dictionaries, encyclopedias, and online resources that support the validity of the research. The collected data is then classified and systematized to facilitate further analysis. Thus, the data processing technique is carried out in depth in order to produce an accurate and relevant normative study. The analysis technique used in this research is qualitative analysis with a descriptive-analytical method. The analysis is carried out by interpreting the laws and regulations in force in each country and linking them to the theory and concept of legal certainty. In the analysis process, the normative data that has been classified is compared to see the similarities and differences, and analyzed in a philosophical framework to understand its implications for legal certainty. In addition, the analysis is carried out by systematically describing the results of the literature study so as to produce logical and accountable arguments. Through this analysis technique, the research is able to produce findings that are not only descriptive but also evaluative and reflective of the land law system in Indonesia and Uzbekistan. With this approach, the research is expected to contribute to enriching academic discourse and offering new perspectives on legal certainty in the transfer of land rights.

RESULTS AND DISCUSSION

A. Regulations on the transfer of land rights in Indonesia and Uzbekistan

Regulation of the transfer of land rights is one of the most important aspects of agrarian law because it is directly related to legal certainty, justice, and protection of rights for the community.²³ Indonesia and Uzbekistan, although both adhere to the civil law tradition, have very different regulations regarding land and the transfer of rights to it. These differences not only concern legal technicalities but are also rooted in the basic philosophy regarding the position of land in social life and the relationship between the state, society, and individuals. In Indonesia, the regulation of land rights transfer is colored by the principle of recognizing individual property rights as hereditary rights recognized by the state, while in Uzbekistan land is entirely owned by the state, and citizens only have the status of land use rights holders. The logical consequence of these differences is that the legal systems that have developed in each country operate with very different patterns, both in terms of the concept of ownership, types of rights, and registration mechanisms.

In Indonesia, the legal basis for the transfer of land rights is regulated through the Basic Agrarian Law Number 5 of 1960 and Government Regulation Number 24 of 1997 concerning Land Registration.²⁴ Article 20 paragraph (1) of the Agrarian Law states that ownership rights are hereditary, strongest and most complete rights that a person can have

²³ Fitriana Trinengsi Taolin, Dian Aries Mujiburohman, and Koes Widarbo, "Kesadaran Hukum Masyarakat Dalam Pendaftaran Peralihan Hak Atas Tanah," *Tunas Agraria* 7, no. 1 (2024): 68–85, <https://doi.org/10.31292/JTA.V7I1.277>.

²⁴ Dedi Koswara, Efa Laela Fakhriah, and Deny Haspada, "Konsekuensi Hukum Sertifikat Hak Atas Tanah Ganda Ditinjau Dari Undang Undang No. 5 Tahun 1960 (UUPA) Dan Peraturan Pemerintah No. 24 Tahun 1997 Tentang Pendaftaran Tanah Dikaitkan Dengan Kepastian Hukum," *Iustitia Omnibus: Jurnal Ilmu Hukum* 5, no. 2 (2024): 91–105, <https://jurnal-pasca.unla.ac.id/iustitiao/omnibus/article/view/97>.

over land.²⁵ Meanwhile, Article 26 paragraph (1) stipulates that the transfer of land rights through sale and purchase, gift, inheritance and other legal acts must be made by an authentic deed before a Land Deed Making Officer.²⁶ This provision is further emphasized by Article 37 paragraph (1) of Government Regulations Number 24 of 1997 which states that the transfer of rights can only be registered if proven by a Land Deed Making Office deed.²⁷ This mechanism confirms that Indonesia adheres to the principle of land registration that is negatively inclined to be positive, namely that the land certificate issued by the National Land Agency is a strong piece of evidence but can still be challenged if it is later proven that there is a legal defect. This reflects the legal philosophy of Indonesia, which places legal certainty as protection but still provides room for correction to ensure justice.

Uzbekistan lays the legal foundation for land law in the Constitution of the Republic of Uzbekistan 1992 and the Land Code of Uzbekistan 1998, which has been amended several times.²⁸ Article 55 of the Constitution explicitly states that land, subsoil, water, flora, fauna, and other natural resources are the property of the state. Land Code Article 16 continues this provision by affirming that citizens and legal entities cannot own land as property, but can only be granted permanent use rights, inheritable lifetime use rights, or lease rights. Article 23 of the Land Code states that land use rights can be transferred through inheritance or lease agreements, while Article 25 affirms that land use rights are considered valid only if registered in the state register of land rights. Thus, in Uzbekistan, the land registration system is constitutive, meaning that the existence of the right itself is only born after registration in the state cadastre institution. This system emphasizes the principle of full state control over land, while also placing individuals as users who depend on state authority. Philosophically, Indonesia and Uzbekistan show fundamental differences in interpreting the relationship between the state, society, and land. Indonesia, through the Agrarian Law, places land as a gift from God controlled by the state for the greatest prosperity of the people.²⁹ The state has the authority to regulate, but still provides ample space for the recognition of individual property rights that are recognized as hereditary.³⁰ Therefore, the transfer of land rights becomes a legal instrument that enables socio-economic mobility, protects inheritance rights, and guarantees certainty in economic transactions. Uzbekistan, on the other hand, places land entirely as state property, a legacy of the Soviet legal tradition that rejects private ownership of land.³¹ Individual rights are limited to usage rights which depend entirely on state administrative recognition.³² Legal

²⁵ Klaudius Ilkam Hulu and Dalinama Telaumbanua, "Kepemilikan Hak Atas Tanah Warisan Yang Diperoleh Melalui Harta Peninggalan Orang Tua," *Jurnal Panah Keadilan* 1, no. 2 (2022): 52-61, <https://doi.org/10.57094/JPK.V1I2.453>.

²⁶ Mukti Maulana Tamami And Tetti Samosir, "Perlindungan Hukum Ahli Waris Akibat Pemalsuan Akta Hibah Yang Dibuat Oleh PPAT," *Imanot: Jurnal Kemahasiswaan Hukum & Kenotariatan* 4, no. 2 (2025): 335-55, <https://journal.univpancaasila.ac.id/index.php/imanot/article/view/4316>.

²⁷ Khadijah, Achmad Faishal, and Rahmida Erliyani, "Pendaftaran Pemindahan Hak Atas Tanah Oleh Kepala Kantor Pertanahan Dalam 'Kedaan Tertentu' Menurut Hukum Tanah Nasional," *Collegium Studiosum Journal* 6, no. 1 (2023): 98-113, <https://doi.org/10.56301/CSJ.V6I1.815>.

²⁸ Shovkat Kholdorov, Zafarjon Jabbarov, and Tulkin Shamsiddinov, "Soil Governance: A Review of the Current Legislative Framework for Managing Soil Resources in Uzbekistan," *Soil Security* 13 (2023): 100105, <https://doi.org/10.1016/j.soisec.2023.100105>.

²⁹ Muhammad Ghazali Rahman and Adwin Tista, "Asas Pemisahan Horisontal Dalam Politik Hukum Pertanahan," *Socius: Jurnal Penelitian Ilmu-Ilmu Sosial* 2, no. 6 (2025), <https://doi.org/10.5281/ZENODO.14842847>.

³⁰ Pandapotan Damanik, "Dualism of Land Rights Recognition in National and Customary Legal Systems in the Perspective of Dignified Justice," *Academia Open* 10, no. 1 (2025), <https://doi.org/10.21070/acopen.10.2025.11363>.

³¹ Kurbanov, Djanibekov, and Herzfeld, "Land Property Rights and Investment Incentives in Movable Farm Assets: Evidence from Post-Soviet Central Asia."

³² Mirzaakbarov Ozodbek Askarjon o'g'li et al., "State Registration Of Rights For Real Estate," *Modern American Journal of Engineering, Technology, and Innovation* 1, no. 2 (June 4, 2025): 246-58, <https://usajournals.org/index.php/2/article/view/256>.

certainty here is administrative, because without registration in the national cadastre system, individual rights are never recognized.

This difference in legal systems also has a direct impact on the concept of legal certainty. In Indonesia, legal certainty in the land sector is obtained through two layers of mechanisms, namely the Land Deed Official deed which proves the transfer of rights and the land certificate issued by the National Land Agency as strong evidence of ownership.³³ also has a direct impact on the concept of legal certainty. In Indonesia, legal certainty in the land sector is obtained through two layers of mechanisms, namely.³⁴ In Uzbekistan, legal certainty is determined entirely by registration. Land use rights do not have legal existence before being recorded in the state cadastre, so this system is more constitutive and gives full power to the state administration. From the perspective of legal certainty, the Uzbek model is indeed more assertive, but from the perspective of protecting individual rights, it tends to be weak because it does not recognize private ownership.

The philosophical study of legal certainty in the transfer of land rights can be understood by referring to Gustav Radbruch's thoughts on the three basic values of law, namely justice, certainty, and utility.³⁵ In the context of Indonesia, the regulation of land rights transfer through the Land Deed Making Officer deed and registration at the National Land Agency reflects an effort to balance between legal certainty and justice. Land certificates serve as strong evidence to provide certainty, but the nature of the negatively-inclined-to-be-positive system still provides room for correction for the sake of substantive justice.³⁶ This indicates that the Indonesian legal system attempts to maintain harmony between these three values, although conflicts often arise in practice, such as in inheritance disputes or overlapping certificates. It also demonstrates that law in Indonesia does not stop at formal legality but still considers aspects of social justice.

Meanwhile, the system in Uzbekistan is closer to the legal positivism paradigm asserted by Hans Kelsen, where law is understood as a norm that applies hierarchically and originates from the highest authority, in this case, the state.³⁷ Land rights only exist to the extent that they are recognized in the state cadastre, and without administrative registration, individual rights are not recognized at all. This approach affirms the supremacy of formal norms and minimizes the role of substantive justice and expediency. Within Hans Kelsen's framework, the Uzbekistan system indeed has advantages in terms of legal certainty because rights are considered to arise and be valid only based on formal procedures. However, from Radbruch's perspective, this system tends to sacrifice the value of justice because it excludes the possibility of recognizing rights that exist in society outside of state registration.

³³ Dewi Padusi Daeng Muri, Erna Sri Wibawanti, and Manda Ika Safitri, "Sertifikat Elektronik Sebagai Jaminan Perlindungan Hak Atas Tanah Dalam Pelaksanaan Pendaftaran Tanah," *Jurnal USM Law Review* 8, no. 2 (2025): 1126-47, <https://doi.org/10.26623/JULR.V8I2.12136>.

³⁴ M. Yazid Fathoni, Sahruddin Sahruddin, and Zaenal Arifin Dilaga, "Tanggung Jawab Negara Dalam Penerbitan Sertifikat Tanah Waris Yang Belum Dibagi Dalam Perspektif Sistem Publikasi Pendaftaran Tanah," *JATISWARA* 40, no. 1 (2025): 86-99, <https://doi.org/10.29303/JTSW.V40I1.1197>.

³⁵ Mohammad Wangsit Supriyadi et al., "Pokok Pikiran Dan Sumbangsih Fundamental Gustav Radbruch Terhadap Perkembangan Ilmu dan Hukum," *Quantum Juris: Jurnal Hukum Modern* 7, no. 1 (2025): 395-413, <https://journalversa.com/s/index.php/jhm/article/view/840>.

³⁶ Ajeng Putri Wanapertiwi, "Kepastian Hukum Terhadap Sertifikat Tanah Berbasis Elektronik Sebagai Bukti Kepemilikan Hak Atas Tanah Di Indonesia" (Universitas Islam Sultan Agung, 2023).

³⁷ Syahrul Fauzan Putra Rinaldi et al., "Hukum Positivisme: Analisis Pemikiran Hans Kelsen Tentang Grundnorm," *Nusantara: Jurnal Pendidikan, Seni, Sains Dan Sosial Humaniora* 3, no. 01 (2025): 1-1, <https://journal.forikami.com/index.php/nusantara/article/view/961>.

From the perspective of Pancasila's legal philosophy, Indonesia has a more pluralistic and humanistic approach. Land is seen as a gift from God that must be managed by the state for the greatest prosperity of the people, as reflected in Article 33 paragraph (3) of the 1945 Constitution.³⁸ This philosophy asserts that although the state has authority, individual interests are still recognized, especially through the recognition of hereditary property rights. Thus, the Indonesian system not only promotes formal certainty but also seeks to present distributive justice and protection of people's rights. This is the main difference with Uzbekistan, where a utilitarian approach based on state control is more dominant than respect for individual rights. In practice, the Indonesian system does face technical and administrative challenges, but philosophically it is more in line with the idea of social justice.

Indonesia and Uzbekistan are taking different paths in formulating the relationship between the state, individuals, and land. Uzbekistan emphasizes formal-positivistic legal certainty that provides strong legality guarantees but is less responsive to social dynamics, while Indonesia promotes relative legal certainty by opening up room for correction for the sake of justice. This difference shows that legal certainty is not a single concept, but rather the result of the dialectic between values, traditions, and legal politics of a country. This philosophical analysis shows that the Indonesian model has the potential to be more adaptive in accommodating the rights of society amidst social complexity, while the Uzbekistan model is more administratively stable but rigid in recognizing rights. Thus, the comparison of the two enriches the understanding of how legal certainty can be interpreted differently in the context of the same civil law tradition.

B. Harmonization of Land Rights Transfer Regulations in Indonesia and Uzbekistan with Civil Law Principles that Guarantee Legal Certainty

The principles of civil law that guarantee legal certainty in the transfer of land rights generally include the principle of legality, the principle of publicity, the principle of consensualism, the principle of protection of subjective rights, and the principle of good faith.³⁹ The principle of legality emphasizes that every⁴⁰ the transfer of rights must be based on clear and applicable legal norms.⁴¹ The principle of publicity requires that the transfer of rights be known to third parties through official registration.⁴² The principle of consensualism asserts that a valid agreement gives rise to legal obligations.⁴³ Meanwhile, the principle of protection of subjective rights and the principle of good faith ensure that rights acquired through correct mechanisms are guaranteed by the state and cannot be arbitrarily challenged.⁴⁴ These principles serve as a benchmark for assessing the extent to

³⁸ Laola Subair, "Eksistensi Hak Penguasaan Menurut Undang-Undang Pokok Agraria," *Jurnal To Ciung : Jurnal Ilmu Hukum* 1, no. 1 (2021): 1-11, <https://www.ojs.unanda.ac.id/index.php/tociung/article/view/833>.

³⁹ Restu Adi Putra, Dominikus Rato, and Dyah Ochtorina Susanti, "Kepastian Hukum Pengaturan Publisitas Pendaftaran Tanah Sistematis Lengkap (PTSL)," *Jurnal Ilmu Kenotariatan* 2, no. 2 (2021): 1-13, <https://doi.org/10.19184/JIK.V2I2.22161>.

⁴⁰ Muhammad Idham, "Pembatalan Akta Jual Beli Hak Atas Tanah Karena Salah Satu Pihak Melakukan Wanprestasi" (Universitas Islam Sultan Agung, 2024).

⁴¹ Fikriya Aniqa Fitri et al., "Tinjauan Teoritis Tentang Asas Legalitas Dalam Hukum Pidana Indonesia," *Jimmi: Jurnal Ilmiah Mahasiswa Multidisiplin* 1, no. 2 (2024): 202-9, <https://doi.org/10.71153/JIMMI.V1I2.134>.

⁴² Yunita Mulyana Pasaribu, Ida Hanifah, and Bahmid Bahmid, "Penerapan Pendaftaran Jaminan Fidusia Secara Elektronik Oleh Kreditur Ditinjau Dari Peraturan Menteri Hukum Dan Ham Nomor 9 Tahun 2013," *Legalitas: Jurnal Hukum* 14, no. 1 (2022): 87-93, <https://doi.org/10.33087/LEGALITAS.V1I2.312>.

⁴³ Adam Ardiansyah et al., "Peranan Asas-Asas Hukum Perjanjian Dalam Mewujudkan Tujuan Perjanjian Bisnis," *Jurnal Kewirausahaan & Inovasi* 2, no. 1 (2024): 11-20, <https://jurnalunived.com/index.php/JKWI/article/view/88>.

⁴⁴ Idham, "Pembatalan Akta Jual Beli Hak Atas Tanah Karena Salah Satu Pihak Melakukan Wanprestasi."

which the regulation of land rights transfers in Indonesia and Uzbekistan provides legal certainty to legal subjects.

The regulation of land rights transfers in Indonesia cannot be separated from the framework of Law Number 5 of 1960 concerning Basic Agrarian Regulations as the legal foundation of land affairs. Article 19 paragraph (1) of the Agrarian Law affirms that to ensure legal certainty, the government organizes land registration throughout the territory of the Republic of Indonesia.⁴⁵ Article 37 paragraph (1) of Government Regulation Number 24 of 1997 states that the transfer of land rights due to sale and purchase, exchange, grant, inclusion in a company, or other legal actions can only be registered if proven by a deed made by a Land Deed Official.⁴⁶ With this arrangement, it is evident that the transfer of rights only gains full legitimacy after fulfilling the formal requirements of a Land Deed Official deed and registration. This provision affirms that the Indonesian legal system seeks to balance contractual and administrative aspects in maintaining legal certainty.

From the perspective of the principle of legality, the provisions of the Agrarian Law and Government Regulation Number 24 of 1997 show that the transfer of land rights in Indonesia has a clear and written legal basis. Legality in the transfer of rights is maintained through formal mechanisms that must be fulfilled, namely a valid agreement between the parties, stated in an authentic deed, and registered with an official institution. Nevertheless, the Indonesian registration system still adheres to a negative system with a positive tendency, as stipulated in Article 32 paragraph (2) of Government Regulation Number 24 of 1997, which states that the certificate is not absolutely inviolable if there is evidence of another stronger right.⁴⁷ This condition means that the principle of legality in Indonesia still has loopholes to be challenged, even though normatively the legal basis is strong. Thus, legal certainty is relative because it does not rule out the possibility of corrections to land data.

The principle of publicity in Indonesian land law is also explicitly regulated. Article 23 paragraph (1) of the Agrarian Law states that every transfer of ownership rights must be registered according to the provisions stipulated by the Minister of Agrarian Affairs.⁴⁸ This registration is intended to allow third parties to know the legal status of the land, so that disputes do not occur later. The land certificate system issued by the National Land Agency is a concrete manifestation of the principle of publicity, where every change in ownership status must be open and accessible. However, a common weakness is the delay in data updates or the existence of land mafia practices that falsify documents, so the principle of publicity does not fully guarantee legal certainty. This indicates a gap between the ideal norm and implementation practices.

The principle of consensualism, which is one of the pillars of civil law, also applies to the transfer of land rights in Indonesia. Article 1457 of the Civil Code states that a sale and

⁴⁵ Wulanmas Anna P G Frederik, Deine R Ringkuangan, and Herry F D Tuwaidan, "Pendaftaran Hak Atas Tanah Dalam Perspektif Kepastian Hukum," *Amanna Gappa* 32, no. 1 (2024): 19–27, <https://journal.unhas.ac.id/index.php/agjl/article/view/35063>.

⁴⁶ Johan Rongalaha and James Yoseph Palenewen, "Implikasi Pada Kantor Pertanahan Kota Jayapura Atas Balik Nama Sertifikat Hak Milik Atas Tanah Untuk Menjamin Kepastian Hukum," *Jurnal Hukum Ius Publicum* 3, no. 1 (2022): 50–70, <https://doi.org/10.55551/JIP.V3I1.45>.

⁴⁷ Ivan Damarwulan et al., "Perlindungan Hukum Terhadap Pemilik Tanah Atas Gugatan Pembatalan Sertifikat (Studi Kasus Putusan Mahkamah Agung Nomor 2292K/Pdt/2020)," *Jurnal Hukum Al-Hikmah: Media Komunikasi Dan Informasi Hukum Dan Masyarakat* 4, no. 3 (2023): 708–37, <https://ojs23.uisu.ac.id/index.php/alhikmah/article/view/7910>.

⁴⁸ Rongalaha and Palenewen, "Implikasi Pada Kantor Pertanahan Kota Jayapura Atas Balik Nama Sertifikat Hak Milik Atas Tanah Untuk Menjamin Kepastian Hukum."

purchase is considered valid if the parties agree on the goods and the price. However, in the context of land, the principle of consensualism does not stand alone, but must be combined with the formal requirements stipulated by the Agrarian Law and Government Regulation 24 of 1997.⁴⁹ This means that even if the parties have agreed, the transfer of rights is not perfect without a PPAT deed and registration. This shows that Indonesian law tries to balance the principle of consensualism with the principles of legality and publicity. Thus, legal certainty in land transactions does not only rely on agreement, but also on the formal legitimacy of the state.

The principle of protection of subjective rights in the Indonesian legal system is implemented through the state's obligation to provide certificates as strong evidence. Article 32 paragraph (1) of Government Regulation Number 24 of 1997 affirms that the certificate is a valid and legally binding piece of evidence.⁵⁰ This provides protection to the rights holder so that their land cannot be disputed without valid reason. However, this protection is not absolute, as mentioned in Article 32 paragraph (2), which opens the possibility of lawsuits from other parties who have stronger evidence.⁵¹ Therefore, the protection of subjective rights in Indonesia tends to be dynamic, providing room for correction in order to achieve substantive justice.

The principle of good faith is also very relevant in the transfer of land rights in Indonesia. Although not explicitly mentioned in the Agrarian Law, this principle is reflected in judicial practice, where a buyer in good faith who obtains a certificate often receives greater protection. This is in line with the jurisprudence of the Supreme Court which emphasizes the importance of good intention in land transactions. Thus, the principle of good faith complements legal certainty, especially in conditions where the certificate is disputed. However, the weakness is the difficulty in proving good or bad intentions objectively, so this principle is often interpreted casuistically by judges.

In contrast to Indonesia, Uzbekistan adheres to a stricter and more formalistic legal system in the transfer of land rights. Based on the Land Code of the Republic of Uzbekistan (1998, amended), Article 16 states that land is owned by the state, while individuals can only be granted lifetime use rights, lease rights, or long-term use rights.⁵² Article 23 of the Land Code states that the right to use land only arises after it is registered in the national cadastre system. This means that without official registration, the transfer of land rights has no legal force whatsoever. Thus, Uzbekistan emphasizes legal certainty through the absolute mechanism of state administration.

From the perspective of the principle of legality, all land rights only exist to the extent regulated by the Land Code, and are only valid if they meet administrative requirements. There is no recognition of customary rights or rights that arise factually without registration, as is still possible in Indonesia. With this model, the principle of legality in Uzbekistan is

⁴⁹ Mohammad Arifin, Reza Hilmy Luayyin, and Fia Ayuning Pertiwi, "Analisis Keabsahan Jual Beli Perpektif Ekonomi Islam Dan Kuh Perdata," *JSE: Jurnal Sharia Economica* 3, no. 1 (2023): 1-15.

⁵⁰ Heni Rizanah, "Keabsahan Sertipikat Sebagai Alat Bukti Yang Terbit Karena Pendaftaran Sistematis Lengkap (PTSL) Dalam Prespektif Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah," *Law Proscientist* 1, no. 1 (2022): 15-22.

⁵¹ Andi Abdi Islam, Syahruddin Nawi, and Andi Risma, "Penerapan Pasal 32 Ayat (2) PP 24 Tahun 1997 Tentang Pendaftaran Tanah Mengenai Asas Rechtsverwerking," *Journal of Lex Philosophy (JLP)* 5, no. 2 (2024): 1572-87, <https://www.pascumi.ac.id/index.php/jlp/article/view/1956>.

⁵² Aziz Kazakov et al., "Formation of Land Use System in Uzbekistan: Past and Today," ed. T. Sultanov, *E3S Web of Conferences* 443 (2023): 06012, <https://doi.org/10.1051/e3sconf/202344306012>.

truly implemented strictly, so there is no room for claims to arise outside the formal legal framework. Although this increases legal certainty, it tends to ignore social dynamics.

The principle of publicity in Uzbekistan is also implemented absolutely. Every transfer of land use rights must be recorded in the National Cadastre System, and this information is accessible for the legal interests of third parties. This regulation shows that the state makes data transparency the main instrument in preventing land disputes. In contrast to Indonesia, which still faces problems with land data transparency, Uzbekistan implements a cadastral digitization system to strengthen the principle of publicity. Thus, the principle of publicity in Uzbekistan is stronger and more stable, albeit with the consequence of high state control over all individual rights.

The principle of consensualism in the Uzbek system does not have a dominant position. Although agreements between parties are the basis of transactions, land rights only arise when they have been recorded in the cadastre system. Thus, the principle of consensualism only functions as an initial door, not as a determinant of the birth of rights. This is different from Indonesia, where the agreement of the parties is still recognized, although it must be complemented by formal requirements. The Uzbek system shows the supremacy of the principles of legality and publicity over the principle of consensualism.

The principle of protection of subjective rights in Uzbekistan is strongly guaranteed by the state through the cadastre mechanism. Every individual recorded in the cadastre system obtains full protection of their rights, and cannot be sued on the basis of unrecorded ownership. This strengthens formal legal certainty while providing guarantees to parties who have gone through official procedures. However, the weakness is the closed possibility of recognizing rights that arise informally or based on social practices. The protection provided by the state is administrative, not substantive.

The principle of good faith in the Uzbek system does not receive much space because the focus is on formal procedures. As long as the right is recorded in the cadastre, the legal subject is protected without the need to see whether the transaction was carried out in good faith or not. This is contrary to the Indonesian system which gives significant weight to the good intentions of the buyer. Philosophically, Uzbekistan prioritizes formal-positivistic certainty in the style of Hans Kelsen, while Indonesia is more flexible by providing room for correction based on the value of justice. These differences reflect the legal orientation of each country in balancing certainty, justice, and benefit. Indonesia is not fully aligned because it is still weak in formal legal certainty, although it is quite strong in justice and benefit. Uzbekistan is more aligned with the principle of formal legal certainty but has not met the demands of justice and benefit. Therefore, it can be said that both systems are not fully aligned with the principles of civil law in a complete philosophical sense, because each still emphasizes different values and has not succeeded in uniting certainty, justice, and benefit in a balanced way.

CONCLUSION

Indonesia, implements a land registration system with a negative nature with a positive tendency. This system provides room for substantive justice, but creates weaknesses in the aspect of legal certainty because land certificates do not absolutely guarantee the validity of rights. Conversely, Uzbekistan with a national cadastre system, places land as state property

and emphasizes formal legal certainty through strict administrative recording. This makes legal certainty more guaranteed, but risks ignoring substantive justice and benefits for the community. Indonesia relatively emphasizes more on the protection of subjective rights and substantive justice, but is still weak in guaranteeing formal legal certainty. Uzbekistan, on the other hand, strongly emphasizes the principles of legality and publicity, but ignores consensualism and the protection of rights based on social facts. Thus, it can be concluded that the regulation of land rights transfers in Indonesia is not fully aligned with the principle of civil law certainty due to the limitations of the negative system, while Uzbekistan is more aligned formally but not balanced with the principles of justice and benefit. Therefore, both countries still need improvements so that land regulations can provide legal certainty that is both fair and beneficial to society.

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