

Legal Consequences of Land Rights Conversion and Recognition of Customary Rights in Land Registration

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Abstract

Introduction: This article analyzes the legal consequences of land conversion and the registration of customary land in Indonesia, as stipulated by Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units and Land Registration. Many communities maintain traditional understandings of land ownership, which often differ from formal legal recognition.

Purposes of the Research: This research aims to determine the legal ramifications of failing to register land rights, particularly conversion rights and customary lands, within the prescribed timeframe.

Methods of the Research: This research was conducted using a normative juridical method. The approaches used are the legislative approach and the conceptual approach. The legal materials used are primary legal materials, secondary legal materials and tertiary legal materials. The legal processing technique used is to process legal materials by systematizing and the analysis of legal materials is qualitative in nature by interpreting legal materials and providing conclusions using deductive methods from real problems on legal issues.

Results Main Findings of the Research: The findings indicate that delayed registration under Government Regulation Number 18/2021 renders old proof of ownership invalid, potentially leading to the land becoming state land. This has significant implications for legal certainty, formal recognition of ownership, protection against rights loss, and administrative consequences for individuals and communities. The research highlights the critical importance of timely registration to secure land rights and emphasizes the need for policies that protect indigenous communities and facilitate access to the registration process.

Keywords: Land Conversion; Customary Land; Land Registration; Legal Consequences.

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INTRODUCTION

Land ownership for every household is a primary need because land provides shelter, living space and a source of livelihood. In addition to these primary functions, land serves as an economic asset of strategic value in regional and national development. Due to its strategic value, the control, ownership, use and utilisation of land requires fair and orderly regulation based on the provisions of the national land law system, namely Law Number 5 of 1960 concerning Basic Agrarian Principles and its implementing regulations.¹ One form of orderly land administration is the land registration programme, which guarantees

¹ Meta Nadia Winata, "Analisis Terhadap Tanda Bukti Hak Lama Sebagai Petunjuk Kepemilikan Hak Atas Tanah Menurut Peraturan Pemerintah Nomor 18 Tahun 2021", *Indonesian Notary* 3, no. 3, no. 8 (2021). <https://scholarhub.ui.ac.id/notary/vol3/iss3/44>

certainty of rights and legal protection for rights holders. Various land issues related to legal certainty of rights to old land, former western land and customary land. One of these is the existence of land rights that have not yet been registered because the community considers it unimportant to take care of the administration, as in practice they control the land and it has economic value. Most communities still maintain a traditional understanding of land ownership or control rights, which is actually different from the concept of land ownership as regulated in the Basic Agrarian Law. Communities that still have old proof of rights generally assume that the land they control directly is wholly theirs. However, such ownership is not necessarily legally valid, as physical control over land does not always reflect legal ownership.²

Administrative evidence from the colonial era or old rights, western rights or customary rights, in practice, there is still land whose legal status is based on old rights that have not been transformed into formal rights recognised by the national positive legal system. The conversion of land rights is an important mechanism for integrating various forms of historical ownership into the formal state system, while preventing the loss of owners' rights due to uncertainty of evidence or delays in registration. This assertion is supported by a study of the implementation of land registration following Government Regulation No. 18 of 2021 concerning management rights, land rights, apartment units, and land registration, which shows changes in registration procedures, including conversion and recognition of old evidence as one of the bases for registration.³

This study explains that the systematic and comprehensive implementation of land registration aims to establish legal certainty and provide legal protection for the land rights held by the community. These efforts are based on the principles of security and justice as the foundation for creating peace, improving community welfare, supporting national economic growth, and preventing the emergence of land disputes.⁴ Land that is original and has never had an owner may be registered in accordance with the provisions of the Act and government regulations.

Land registration is an important step in providing legal certainty regarding land rights and distinguishing between factual control and legal ownership according to legislation. The conversion of land rights is an important legal administrative step in the context of realising orderly national land administration. This article examines the legal consequences of the land rights conversion process within the framework of Government Regulation of the Republic of Indonesia Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units and Land Registration. This paper takes a socio-legal and anthropological-legal approach based on the finding that land ownership is a primary need and strategic asset, thus requiring fair and orderly regulation. The results of the study show that the conversion of rights has implications for legal certainty, formal recognition of land rights ownership, protection against loss of rights due to late registration, and administrative and substantive consequences for parties who fail to register their land in accordance with the provisions.

² *Ibid.*

³ Aulia Fitri Rahdania, and Benny Djaja. Implementation of Land Registration Procedures in Indonesia Based on Government Regulation Number 18 of 2021. *Journal of Social Research* 2, no. 7 (2023): 2562-2570.

⁴ *Ibid.*

METHODS OF THE RESEARCH

This research is classified as normative legal research. It examines laws that are conceptualised as norms and rules implemented in society to achieve desired objectives.⁵ The approaches used are the legislative approach and the conceptual approach. The legislative approach is used to examine and analyse the ambiguities of norms contained in the substance of a piece of legislation.⁶ The conceptual approach is used to analyse the views or doctrines of legal experts that have developed in legal science.⁷ The legal materials used are primary legal materials, namely Law Number 5 of 1960 concerning Basic Agrarian Principles, Government Regulation of the Republic of Indonesia Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units and Land Registration. Secondary legal materials are legal materials that support the primary legal materials⁸ in the implementation of this study, and tertiary legal materials are also used to complement the primary and secondary legal materials. The legal materials used are legal dictionaries and articles related to legal issues⁹ in this study. The legal processing technique used is to process legal materials by systematising the sources of legal materials so that systematic research results are obtained.¹⁰ The analysis of legal materials is qualitative in nature by interpreting legal materials and providing conclusions using deductive methods from general legal issues to real problems that occur.¹¹

RESULTS AND DISCUSSION

A. Legal Consequences of Late Conversion of Land Rights in Land Registration

The enactment of Law No. 5 of 1960 was the implementation of the mandate set out in Article 33(3) of the 1945 Constitution of the Republic of Indonesia, which stipulates that the land, water and natural resources contained therein shall be controlled by State and utilized to the greatest possible extent for the prosperity of the people. In the exercise of this authority, the government is supported by government regulations which serve as a follow-up to the implementation of the Basic Agrarian Law. One such regulation is Government Regulation Number 24 of 1997 on Land Registration. This regulation serves as an implementing regulation of the Basic Agrarian Law to govern the administration of land registration with a view to achieving the unification of national Agrarian Law, providing legal certainty and establishing orderly land administration. Furthermore, it regulates the mechanism for the conversion of rights and the registration of pre-existing land rights-whether derived from colonial agrarian law or customary law-so that they may obtain recognition and legal certainty in accordance with the national agrarian legal systems.¹²

When discussing the conversion of land rights, the focus of the study encompasses the transformation of pre-existing land rights into land rights in accordance with the provisions of national agrarian law. Furthermore, this discussion covers the affirmation of rights and

⁵ Wiwik Sri Widiarty, *Buku Ajar Metode Penelitian Hukum*, (Yogyakarta: Publika, Daerah Istimewa, 2024). p. 24.

⁶ Muhaimin, *Metode Penelitian Hukum*, (Mataram University Press, Mataram-NTB, 2020), p. 48.

⁷ Gunardi, *Buku Ajar Metode Penelitian Hukum*, (Jakarta: Damera Press, 2022), p. 46.

⁸ Bambang Waluyo, *Penelitian Hukum Dalam Praktek*, (Jakarta: Sinar Grafika, 1996), p. 51.

⁹ Amirudin and H Zainal Asikin, *Pengantar Metode Penelitian Hukum*, (Jakarta: Rajagrafindo Persada, 2006), p. 118-119.

¹⁰ Soerjono, Soekanto and Sri Mamudji, *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*, (Jakarta: Rajagrafindo Persada, 2006), p. 71.

¹¹ Muhaimin. *Op. Cit.* p. 71.

¹² Muhammad Rifaldi Setiawan, and Lalu Panca Tresa D. "Kedudukan Pembuktian Hak Lama Dalam Rangka Pendaftaran Hak Atas Tanah Di Indonesia". *Ganec Swara* 19, no. 2 (2025): 601-607. <https://doi.org/10.59896/gara.v19i2.269>.

other aspects relating to the determination of the legal status of land rights, thereby creating legal clarity and certainty regarding the rights held over a particular plot of land.¹³

Land rights that still have evidence of old land rights must be registered immediately since Government Regulation Number 18 of 2021 concerning management rights, land rights, apartment units, and land registration was enacted. The time period for transferring rights in land registration is five years from the enactment of the regulation, so that by 2026 all land rights that do not yet have written evidence and have not been registered must be registered immediately. This is because if they are not registered based on the provisions of Article 95 of Government Regulation Number 18 of 2021 concerning management rights, land rights, apartment units, and land registration, the old proof of rights will no longer be valid. There are several types of land registration for initial registration. The forms of registration include conversion of rights, recognition of rights, and affirmation of rights. Conversion of rights is the process of transferring or adjusting land rights that existed prior to the coming into force of Law Number 5 of 1960 into land rights recognised under the provisions of that Law. Recognition of rights is the acknowledgement of land rights that are not supported by written evidence of ownership, but which can be proven through continuous physical possession for at least 20 (twenty) years or based on a history of possession by predecessors that can serve as the basis for establishing the rights of the party concerned. Meanwhile, the confirmation of rights is an administrative action undertaken to confirm the status of land rights that have been acquired through a conversion process or that have been recognized in accordance with the provisions of legislations.¹⁴ Written proof of former western rights to land will be declared invalid and the status of the land will become land directly controlled by the state. Based on these provisions, it means that from the specified date, all parties who still have written evidence of former western rights but have not yet registered, if they register the land after the specified period, the evidence will be declared invalid. In addition, the status of the land will also change. Previously, it was possible to apply for a conversion of land rights because the applicant had the requirements to submit an application for conversion of the former western rights land that they still controlled in their name. However, due to this regulation and the applicant's delay in registering the land, the status of the land may change to land directly controlled by the state.

The registration of former western rights land cannot be directly executed to change its status to state land based on the provisions of Article 95 paragraph (2) of Government Regulation Number 18 of 2021, if the applicant has a statement of physical control witnessed by two witnesses and is civilly and criminally liable, which describes: first, the land is truly owned by the applicant and not by another person, and its status is land directly controlled by the state, not former customary land; second, the land is physically controlled; third, the control is carried out in good faith and openly by the applicant as the rightful owner of the land; and fourth, the control is not disputed by other parties. Based on these provisions, the state, as an organisation of the people's power that serves in the field of land administration, urges the community to immediately register their land so that its status is clear, to obtain legal certainty regarding the land they own and to obtain legal protection from the state

¹³ Rahmat, Riardo. "Konversi Hak Atas Tanah Ulayat Kaum Menjadi Hak Milik Melalui Program Pendaftaran Tanah Sistematis Lengkap di Kota Solok". *Soumatera Law Review* 2, no. 2 (2019): 193-206.

¹⁴ Rahdania, A. F., & Djaja, B. *Op. Cit.* p. 2567.

regarding the land they control, to be able to provide clear information to interested parties, including the government, so that the necessary data can be easily obtained in conducting legal actions. If the land registration exceeds the period specified in Government Regulation Number 18 of 2021, the old proof of rights cannot be used as evidence, but can only be used as a reference in land registration. This is of a lower degree in performing legal actions. If the entire process is not carried out in accordance with the applicable regulations, legal consequences will arise relating to the application of boundary markers and the principle of contradiction in the demarcation of boundaries.¹⁵ This is a legal consequence that must be accepted by members of the public whose land rights were registered late in accordance with the provisions of Government Regulation Number 18 of 2021.

Regarding registered land parcels and apartment units and the achievement of orderly land administration as stipulated in Article 3 of Government Regulation Number 24 of 1997 concerning land registration. If orderly land administration is achieved, the objectives of land registration will also be achieved. If the purpose of land registration is achieved and the land administration data is complete, disputes arising from data errors will also decrease. If disputes decrease, good and transparent governance will also be created.

B. Risk of Loss of Rights Due to Late Registration

Based on the provisions of Government Regulation Number 18 of 2021, as interpreted in several studies, there are restrictions and conditions in the form of evidence that can be used for the registration of land that was previously subject to old or customary rights. Delayed registration can result in administrative requirements not being met, meaning that rights do not receive formal recognition, which can have various impacts, such as rights being difficult to prove, unable to be used as collateral, or potentially being taken over by the state under certain conditions. Empirical studies show that the existence of a recognition/registration period puts traditional owners who do not understand the procedures at risk of losing legal protection.

Once converted and recorded in the land registry, land rights receive stronger legal protection through certificate evidence. This reduces the risk of ownership disputes and facilitates economic activity. However, as long as the conversion process has not been completed, owners remain vulnerable to claims by other parties if the old evidence is incomplete or does not meet administrative requirements. Legal certainty in land rights will be obtained if, administratively, the applicant has registered their land with the competent authority, in this case the local District or City Land Office. Once registered, land rights are legally protected by the state. Therefore, if the community is orderly in carrying out land administration, in this case land registration, then legal certainty and guaranteed legal protection of land rights will be obtained based on the land registration application.

Conversion that prioritises individual evidence (certificates in individual names) can reduce forms of customary collective ownership if the process is not designed to accommodate communal rights. The literature emphasises the importance of mechanisms for recognising customary collective rights in the formal process so that indigenous communities are not marginalised. Therefore, sociological and anthropological aspects must be part of the registration practice to ensure substantive justice. After registration,

¹⁵ *Ibid.*

owners gain easier access to financial services (e.g. credit with certificate collateral) and the formal land market. However, administrative costs, document requirements, and technical procedures can be barriers for poor or remote communities. Empirical study recommendations suggest facilitation and assistance programmes to ensure the inclusiveness of the conversion process.¹⁶

Overlapping land titles often give rise to disputes amongst the owners, as well as issues relating to the sale and purchase of land caused by a lack of clear title. Furthermore, this poses a problem for rights holders if they wish to carry out a sale or purchase transactions, due to the lack of clarity regarding ownership. Customary land rights in terms of conversion need to be intensified by disseminating Government Regulation Number 18 of 2021 to the community, especially owners of old rights certificates and indigenous communities, facilitating technical assistance (field services, fee waivers/incentives for vulnerable groups) so that conversion registration is accessible, developing a registration mechanism that recognises and accommodates collective customary rights in order to maintain substantive justice, and strengthening coordination between the local District or City Land Office, the local government, and customary authorities to resolve issues of evidence and customary boundaries in a participatory manner.

CONCLUSION

Government Regulation Number 18 of 2021 significantly impacts the legal status of conversion rights and customary lands in Indonesia. The primary legal consequence of failing to register these lands within the stipulated timeframe is the invalidation of old ownership proofs, potentially leading to their classification as state land. While timely registration offers enhanced legal certainty, formal recognition, and robust protection, delayed registration exposes owners to substantial risks, including the loss of rights and administrative burdens. Crucially, the regulation's implementation necessitates careful consideration to prevent the marginalization of customary collective rights and ensure equitable access to the registration process. The novelty of this research lies in its comprehensive analysis of these specific legal consequences, particularly highlighting the heightened vulnerability of customary land tenure within the framework of Government Regulation Number 18/2021. Based on these findings, it is recommended that the government intensify socialization efforts, provide technical assistance, and develop registration mechanisms that actively accommodate and protect collective customary rights to ensure substantive justice.

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