

# CHAPTER I

## BACKGROUND

### 1.1. Background

Land is one of the essential needs created by God Almighty for the survival of humanity, because the right to land ownership plays an important role in satisfying social needs in daily life, and with the very rapid development of the population, the need for land has also evolved in accordance with the expectations of the community. The growing population will undoubtedly bolster the significance of land ownership rights. State-led development for the wellbeing of the populace includes the provision of land for social survival. This is because existing land is no longer able to meet the ever-increasing needs of the community, especially the need for housing development, agriculture, plantations, and various public facilities needed to fulfil the demands for development in various societal needs and the advancement of community life.<sup>1</sup>

From the explanation above, it is clear that land is a valuable finite resource, therefore the state, as an institution that has the highest legitimate power within the area and an institution that is respected and followed by the people, should manage the welfare of the people by managing the natural resource (in this case land) wisely. The notion of responsible resource

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<sup>1</sup>Mulyadi Mul and Satino -, “Penyelesaian Sengketa Kepemilikan Tanah Bersertifikat Ganda,” *Jurnal Yuridis* 6, (2019), pg. 148

management has been codified Article 33 (3) of UUD 1945, which stipulated that:

*“The land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people”.*<sup>2</sup>

The very first effort by the Indonesian government to comply with Article 33 of UUD 1945 was a land reform initiative through the enactment of Law No. 5 of 1960 regarding Basic Agrarian Law (Hereafter referred to as UUPA). UUPA was created because it was recognized that the structure of Indonesian people's lives, including its economy, is still predominantly agrarian in nature, and the earth, water, and space, as gifts from God Almighty, play a crucial role in achieving a just and prosperous society. Meanwhile the past agrarian law in effect, which was supposed be one of the important tools for building a just and prosperous society, turns out to be the opposite, in many respects actually an obstacle to the achievement of the above ideals.<sup>3</sup>

The Agrarian law that was enacted prior to independence and the enactment of UUPA was an obstacle due to three reasons. The first was due to the fact that the old agrarian law comes from the colonial times, it was partly composed based on the goals and principles of the colonial

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<sup>2</sup> Akbar, Andi Armansyah. "Surat Keterangan Tanah Sebagai Syarat Penyertipikatan Tanah." Skripsi pada Fakultas Hukum, Universitas Hassanudin, Makassar (2017), pg. 1

<sup>3</sup> Purpose of the Basic Agrarian Law stated in General explanation of UUPA.

government, and some are influenced by it, so that it conflicts with the interests of the people and the State in carrying out universal development. Secondly, The colonial agrarian law created a highly complex legal system to be implemented in Indonesia, it was unpragmatic, due to the fact that the agrarian law accepted both cultural law and western law. Thirdly, the colonial law does not guarantee any legal certainty of land ownership for the Indonesian people.<sup>4</sup>

To remedy the inadequacy of the old colonial agrarian law, UUPA was created to:

- a. to provide bases for the formulation of national agrarian law, which shall serve as a means of bringing prosperity, happiness, and justice to the State and the people, especially farmers, in the context of establishing a just and prosperous society;
- b. to provide bases for the establishment of unity and simplicity in land law; and
- c. to provide bases for the provision of legal certainty concerning land rights for all the people”.<sup>5</sup>

In order to achieve said goals, the government conducted land registration throughout the Republic of Indonesia pursuant to Article 19 of UUPA and the land registration activities are held, both individually and collectively.<sup>6</sup>

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<sup>4</sup> Purpose of the Basic Agrarian Law stated in General explanation of UUPA.

<sup>5</sup> Purpose of the Basic Agrarian Law stated in General explanation of UUPA.

<sup>6</sup> Pusat Kajian FH UBB, “Surat Keterangan Tanah: Antara REALITAS Dan Pengakuan,” *PROGRESIF: Jurnal Hukum* 11, (2018), pg. 1889

The implementation of land registration is thereafter governed by Government Regulation No. 10 of 1961 regarding Land Registration. Though it was later determined that the legal provisions contained in Government Regulation No. 10 of 1961 as a legal basis for implementation of land registration are insufficient to enable the land registration in a timely manner with more satisfactory results. So Government Regulation No. 10 of 1961 was refined and turned into Government Regulation No. 24 of 1997 (Hereafter referred to as PP No. 24 Year 1997). In PP No. 24 Year 1997, the objective and system used is maintained which in essence has been stipulated in UUPA, namely that land registration is carried out in the context of providing legal certainty protection in the land sector and that the publication system is a negative system, but contains a positive element, due to the fact it will produce certificate of rights that is used as evidence as a strong means of proof.<sup>7</sup>

After the enactment of UUPA, pursuant to Article 4 of UUPA, the only valid right of ownership that is legally recognized under Indonesian law is the one mentioned in Article 16 of UUPA. In which Article 16 of UUPA only mentioned there are 8 types of rights, such as: *Hak Milik, Hak Guna Usaha, Hak Guna Bangunan, Hak Pakai, Hak Sewa, Hak Membuka Tanah Hak Memungut Hasil Hutan*, and other *hak* that is temporary.<sup>8</sup>

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<sup>7</sup> Roring, Rugeri. "Perlindungan Hukum terhadap Pemegang Hak Atas Tanah sebagai Bukti Kepemilikan Hak Atas Tanah Menurut Peraturan Pemerintah Nomor 24 Tahun 1997." *Lex Crimen* 6, vol 6, (2017), pg.59

<sup>8</sup> Mustarin, Basyirah. "Penyelesaian Sengketa Hak Atas Tanah Bersertifikat Dan Tidak Bersertifikat." *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam*, Vol 4, (2018), pg. 402-403

Furthermore, Article 32 of PP No. 24 Year 1997 stipulates that Land Certificates are a strong evidentiary tool regarding physical data and juridical data contained therein, and any individual who owns a certificate over a land/property has the right control and ownership over the land.<sup>9</sup>

Though UUPA has been enacted there is a clear disconnect with the current regulation and the practice of such regulation. This is because a lot of Indonesian citizens, especially the one living in the rural areas, still use an old form of documentation called *Surat Keterangan Tanah* (Henceforth referred to as SKT) that has been used long before the enactment of UUPA and was issued under customary law and procedures.<sup>10</sup> In Comparison to registering land ownership to the National Land Agency, SKT is made in a simpler process. The process only requires a written agreement or a letter stating ownership between two parties, and for the issuance of the agreement or letter it only requires the witness of the head of Neighborhood association (RT) and several other witnesses for the head of village (*Kepala Desa*) to approve the issuance.<sup>11</sup>

Prior to UUPA, to control a plot of land, the community only needed to acquire the desired land and work on the land. This was because at that

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<sup>9</sup> Article 32 of PP no. 24 year 1997

<sup>10</sup> Alamari, Firdausi, Widodo Suryandono, and Pieter Everhardus Latumeten. "Kedudukan Surat Keterangan Penguasaan Tanah dalam Pemindahan Hak Atas Tanah (Studi Kasus Putusan Pengadilan Negeri Palu Nomor 94/PDT. G/2018/PN PAL)." *Jurnal Indonesian Notary*, vol 1,(2022), pg.5-6

<sup>11</sup> Handayani, Tri. "Legalitas Surat Keterangan Tanah yang Dikeluarkan oleh Kepala Desa sebagai Dasar Transaksi Jual Beli Tanah (Studi Kasus Putusan Mahkamah Agung No. 31. pk/tun/2005)." *PREMISE LAW JURNAL*, Vol. 20, (2017), pg. 1-2

time a large part of Indonesia's territory was a vast forest that had no owner. Based on land rights, the land is owned by the Indonesian people and is shared land, all Indonesian people have the right to this land. Some example of SKT for informal ownership of lands include: *surat girik*, *letter c*, proof of ownership rights based on *Swapraja* regulations, deed of transfer of rights made under the hand and affixed with testimony from the head of the village/head of the community/ward, certificate/letter of *ikrar wakaf*, etc.<sup>12</sup>

The SKT was once a legally accepted proof of land rights prior to the creation of the UUPA, but when UUPA was enacted, the SKT ceased to be valid. The supreme court even validates such a notion. In Court Ruling No. 34/K/SIP/1960 dated February 19, 1960 by the Supreme Court of Indonesia stated that a *Surat Petuk* or *Girik* (evidence of Land Value Tax receipt) was not proof of land right.<sup>13</sup> Article 24 of PP No.24 Year 1997 only stipulated that the usage of SKT can be used to prove the underlying right of ownership over a land, due to the fact that the individual has owned the land before the enactment of UUPA or through cultural rights and has never let it go. Therefore, the individual could register such ownership and convert it into a land certificate.

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<sup>12</sup> Rudiansyah, Muhammad. "Kekuatan Hukum Surat Keterangan Tanah (skt) sebagai Alat Bukti Kepemilikan Tanah berdasarkan Surat Edaran Menteri atr/bpn no. 1756/15. i/iv/2016 tentang Petunjuk Pelaksanaan Pendaftaran Tanah Masyarakat." PhD diss., Universitas Islam Kalimantan MAB, (2022), pg. 9-10

<sup>13</sup> Nadzir, Muhammad. "Kekuatan Pembuktian Surat Keterangan Tanah Sebagai Bukti Hak Kepemilikan Atas Tanah." *Journal de Facto* 4, no. 1, (2017), pg. 7-8

Theoretically, it is clear that individuals should register ownership over their land in order to secure their ownership, pursuant to article 4 and 15 of UUPA. But, the idea that SKT is more than enough to prove and claim strong ownership over lands has some merits to it. The general public, including government authorities such as the tax agency, law enforcement agencies such as the Police, the Attorney General's Office, the Courts, and the PPAT, still accepts SKT as evidence of land ownership, hence there are still several legal products such as court rulings that strengthen the legitimacy of SKT as a means of proof of land ownership rights.<sup>14</sup>

In addition, as stated before PP No. 24 Year 1997 maintains that the objectives and systems that is use are already stipulated in UUPA, namely that land registration is carried out in the framework of providing protection for legal certainty in the land sector and that the publication system is a negative system but it contains positive elements, because it will produce letters of evidence of rights that apply as a strong means of proof.<sup>15</sup> Due to the fact that Indonesia uses a negative system, Even if the individual who is the subject of the right has his name registered in the land book, it is still

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<sup>14</sup> Nadzir, Muhammad. "Kekuatan Pembuktian Surat Keterangan Tanah Sebagai Bukti Hak Kepemilikan Atas Tanah." *Journal de Facto* 4, no. 1, (2017), pg. 60

<sup>15</sup> Roring, Rugeri. "Perlindungan Hukum terhadap Pemegang Hak Atas Tanah sebagai Bukti Roring, Rugeri. "Perlindungan Hukum terhadap Pemegang Hak Atas Tanah sebagai Bukti Kepemilikan Hak Atas Tanah Menurut Peraturan Pemerintah Nomor 24 Tahun 1997." *Lex Crimen* Vol 6.5, (2017), Pg.62

possible to challenge his right so long as the objections can be proven by providing sufficient evidence to back up the claims.<sup>16</sup>

The negative system is evident in Article 32 paragraph (2) of PP No.24 Year 1997, in the case a third party, within 5 years, could challenge the right of land ownership of the land certificate, if they have strong evidence to show juridical data and physical data. Additionally, Article 24 paragraph (1) of PP no.24 Year 1997 stipulates that eyewitness testimony could be used to supplement prove of ownership, and the explanation of Article 24 paragraph (2) stipulates that if an individual could establish evidence of settlement of the property more than 20 years, it is also considered prove of strong ownership.<sup>17</sup> Therefore, An individual with SKT would be able to challenge and win over the right to own a land or property with additional persuasive evidence.

In the rural areas of Indonesia, the land administration is still conducted by cultural law or "*hukum adat*" and is submitted to the individuals that are respected by the community or who has been appointed as the administrator/leader, these individuals could range from customary head, tribal chief, village head or clan head. In addition, the individuals that have been appointed as leaders would also be the one who will keep records

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<sup>16</sup>Sulistyoningsih, Estu. "Kekuatan Hukum surat Keterangan Tanah dalam Sengketa Penguasaan Hak Milik atas Tanah (studi kasus putusan pengadilan negeri mempawah nomor: 03/ptd. g/2013. pn. mpw)." *Jurnal Hukum Prodi Ilmu Hukum Fakultas Hukum Untan (Jurnal Mahasiswa S1 Fakultas Hukum) Universitas Tanjungpura*, vol 3, (2015), pg.16

<sup>17</sup>Mustarin, Basyirah. "Penyelesaian Sengketa Hak Atas Tanah Bersertifikat Dan Tidak Bersertifikat." *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam*, Vol 4, (2018), pg..403-405



of the land ownership within his community, the data kept could range from the size to the individual who owns the land. Though in most cases the data is not written and BPN is not aware of the ownership of the Land.<sup>18</sup>

In the case of land ownership and, sales and purchase of ownership being written it is usually in the form of *letter c, surat girik, etc.* These informal proof of ownership usually being a valid form proof of ownership, but the bought land is still usually not listed in BPN database.<sup>19</sup> This could lead to some trouble in the case where the individual in charge of community has passed away, there is no one to identify the ownership of the land, or if another person has claimed the ownership of another land as he has not known the existence of the original ownership through cultural laws, such situation could also cause a dispute.<sup>20</sup>

In the present day land dispute is a common problem within Indonesia, To deal with the rising amount of land disputes in Indonesia, the Jokowi-JK administration has started an agrarian reform, which started with Presidential Regulation no. 86 Year 2018 being created. The implementation of this agrarian reform targets four categories of land, namely: (i) Lands for legalization of assets that are the object and at the

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<sup>18</sup> Mudjiono Mudjiono, "Alternatif Penyelesaian Sengketa Pertanahan Di Indonesia Melalui Revitalisasi Fungsi Badan Peradilan," *Jurnal Hukum IUS QUIA IUSTUM* 14, no. 3 (2007), pg. 464-465

<sup>19</sup> Mustarin, Basyirah. "Penyelesaian Sengketa Hak Atas Tanah Bersertifikat Dan Tidak Bersertifikat." *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam*, Vol 4, (2018), pg.397-412

<sup>20</sup> Mudjiono Mudjiono, "Alternatif Penyelesaian Sengketa Pertanahan Di Indonesia Melalui Revitalisasi Fungsi Badan Peradilan," *Jurnal Hukum IUS QUIA IUSTUM* 14, no. 3 (2007), pg. 464-465

same time the arena of conflicting claims between community groups and companies and government agencies, and lands that have been controlled by the community but have not obtained legal certainty. they are rights holders; (ii) Land Objects for Agrarian Reform (TORA) to be redistributed to the rural poor; (iii) State forests allocated to villages and village communities through Customary Forest and Social Forestry schemes including Community Forests (HKm), Village Forests (HD), Community Plantation Forests (HTR), and so on; (iv) Management and procurement of village asset land to be managed by poor farmer households together. In regards to the legalization of lands, the government created a registration program, PTSL, where the government with discretion of BPN register and create certificates or convert informal evidence of ownership to certificate of plots of land in Indonesia.<sup>21</sup>

The realization of this program has been semi - successful so far, on 4th of February, the Secretariat General for the Ministry of Agrarian Affair and Spatial Planning announced 79 million plots of land have been certified, which are roughly 62% of the goal. Though he admits that there are still 6,000 lands still being disputed and cannot be certified.<sup>22</sup> This was to be seen as a great achievement by the government considering a lot of lands have been registered, and the amount of land being disputed is roughly a

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<sup>21</sup> Amaliyah, Amaliyah, et al. "Reforma Agraria dan Penanganan Sengketa Tanah." *HERMENEUTIKA: Jurnal Ilmu Hukum* 5.1, (2021), pg.31-32

<sup>22</sup>CNN Indonesia, "Tanah Bersertifikat Di Ri Baru Capai 72 Juta Bidang," *Ekonomi*, Last modified February 4, 2021, <https://www.cnnindonesia.com/ekonomi/20210204171319-92-602391/tanah-bersertifikat-di-ri-baru-capai-72-juta-bidang>.

small percentage. But, the goal of the land reform itself was to decrease the amount of land dispute to a minimum, and land dispute has a very slight amount of change. The program itself in fact, has created more land disputes rather than decreasing it. The Minister for the Ministry of Agrarian Affair and Spatial Planning announced that though they have increased the number of registered land to 79,000, the number of land dispute cases has also increased to 8,000 by October 2022.<sup>23</sup>

## 1.2. Formulation of Issue

From the results of the land reform above, it is clear that the problem of land dispute has passed beyond the poor execution of land reforms and bad precedence of practicing agrarian laws. The problem has evolved to the fact that the current agrarian law, specifically the land registry law and land ownership law, is outdated to the current climate of the agrarian sector. This has created a set of agrarian laws, in which they contradict and undermine the strength of current land certificate, which opens up to possibilities of more land dispute. It looks like a never ending cycle. Therefore, This thesis proposes the following question:

1. What is the legal protection of land ownership by *Surat Keterangan Tanah*?

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<sup>23</sup> Emir Yanwardhana, "Menteri ATR : Ada 8.000 Kasus Sengketa Tanah!," CNBC Indonesia, Last modified February 24, 2022, <https://www.cnbcindonesia.com/news/20220224160041-4-318095/menteri-atr-ada-8000-kasus-sengketa-tanah>.

2. How to resolve land disputes that are caused by a *Surat Keterangan Tanah* that has not been converted to basic agrarian law statutory rights?

### **1.3. Purpose of Writing**

The author formulates the research objectives as follows:

1. To identify and understand how the current agrarian laws allow for land disputes to arise.
2. To understand SKT legal standing within the current agrarian law.
3. To find a solution to solve land disputes that have overlapping claims by multiple parties on the underlying basis of cultural or old rights.

### **1.4. Benefit of Writing**

#### **1.4.1. Theoretical Purpose**

The findings from this thesis is expected to be beneficial generally by giving a deeper insight in the usage of SKT within society, government institutions, and courtrooms. In addition, the research will be giving some solutions, in how to solve land disputes that involve SKT, specifically in regards to ownership of land.

#### **1.4.2. Practical Purpose**

The author of the following research paper anticipates that it will provide theoretical benefits, such as becoming a basis, or the platform for any future researches that are in regards to the matters land dispute in regards to the legality of ownership using SKT as the underlying basis. These theoretical benefits are expected to be realized after the publication of the research paper. In addition, the author has high hopes that the study will have other theoretical benefits that will help continue research and act as a compass for any research that may be conducted in the future.

#### **1.5. Framework of Writing**

This legal research is broken up into 5 (five) chapters, with each chapter having sub-sections that are intended to make it easier to understand the research's overall findings. The framework for this research paper are the following:

##### **CHAPTER I: Introduction**

The first chapter provides background information for the thesis, as well as highlights the importance of the issue and the Author's reasoning for selecting the specific issue. In the first chapter, the author will describe what is the current legal system that regulates the agrarian sector, especially in regards to land ownership. Furthermore, the author will also describe the current practices within the agrarian sector, this include describing what

SKT is, how it is use within the agrarian sector, how it contradicts within the current legal system that regulates the agrarian sector. The author will then state the two formulations of issues that will be taken to conduct further research concerning the title, and in addition the author will tell the benefit and purpose of conducting the research.

## CHAPTER II

The second chapter explains the analytical tools that will be utilized to explore the paper's topics in greater depth. The subsequent chapter will consist of theories, regulations, and other concepts and/or principles that may be pertinent to the thesis's subject matter.

## CHAPTER III

This chapter is divided into five sections consisting of Types of Research, Types of Data, Methods of Processing Data, Types of Approaches, and Data Analysis. This type of research uses the type of Normative Empirical Judicial Case Study Legal Research, using Normative Juridical Research Methods, where the author will examine library materials or secondary data to be studied. Types of secondary data are in the form of data obtained from the media or in the form of notes, books, archives of Supreme Court decisions, and so on. Primary data will also be used to strengthen data for observation, namely through document study methods. The type of approach that the author will use is legal systematics. The data

analysis that will be used by the author is deductive in nature, namely drawing conclusions from general problems to a concrete problem faced with a specific problem.

#### CHAPTER IV

The fourth chapter provides the observational data acquired by the author, followed by two sections of analysis of the problem formulation chosen by the author. In response to the formulation of questions, the author will examine current national agrarian laws, such as UUPA, PP No. 24 Year 1997, and two instances pertaining to land disputes involving SKT as the foundation of claims.

#### CHAPTER V

On the basis of the analysis presented in chapter four, the fifth chapter will iterate a conclusion about the previously mentioned issues. In addition, the author will provide a recommendation in regards to land disputes that uses SKT as the basis of claims.