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Land Registration Derived from Customary Land According to Government Regulation Number 24 of 1997

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Abstract:

The purpose of this study is to determine the procedure for registering land derived from customary land according to Government Regulation Number 24 of 1997. The results show that the procedure for registering land derived from customary land includes the activity of initial registration, which is the registration of land objects that have not been registered based on Government Regulation Number 10 of 1961, as amended by Government Regulation Number 24 of 1997. This registration is carried out systematically and sporadically with certain requirements that must be fulfilled by the applicant. These requirements include a letter of application, a photocopy of the applicant's identification card, a photocopy of the Land and Building Tax, written evidence of the original land accompanied by a certificate of physical possession and a certificate from the village head. Once all the required data is complete and meets the criteria, a certificate of rights over customary land is issued.

Keywords: Land registration, customary land

1. Introduction and Background

In human life, land is a crucial factor as it is inseparable from human existence. Humans live on land (settle) and obtain food by utilizing the land. Moreover, land also has an emotional connection with humans. Everyone needs land, not only in life but also as a final resting place.

Currently, land is considered a valuable asset with a high market value for society due to its function as a source of livelihood. Therefore, every inch of land is preserved until the end of one's life. Indonesia continues to undergo development in various fields, resulting in the evolution of land functions and the increasing demand for land rights by the community. The limited amount of available land and the growing population in Indonesia create an imbalance between land supply and demand, leading to various issues.

According to customary law, humans have a cosmic-magical-religious relationship with their land, in addition to a legal relationship. This relationship exists not only between individuals and their land but also among members of a customary law community (*rechtsmeetschap*).

In customary law, land is an essential matter, and the connection between humans and land is described above. The land serves as their dwelling place, provides sustenance, burial grounds, and a sanctuary for ancestral spirits. Land plays a vital role in the life and livelihood of the nation, especially in agrarian societies.

Therefore, competent authorities need to intervene in land affairs, particularly regarding the establishment, transfer, and termination of land ownership. In the context of customary law, this intervention is carried out by the heads of various legal associations, such as village chiefs or administrators. If any issues related to customary land arise, these existing administrators are responsible for resolving them.

Land use patterns to support development will shift according to developments in each sector. The imbalanced condition of land demand and availability continues to persist, leading to problems in land use, including:

- The reduction of fertile agricultural land for residential, industrial, and non-agricultural purposes.
- Clashes of interest between various development sectors (e.g., forestry and transmigration, mining and plantations, and so on).
- Declining quality of the residential environment due to floods and water scarcity in terms of quantity and quality.
- Expansion of critical land due to inappropriate land use, resulting in erosion, floods, and sedimentation.
- Land use for various activities that generate waste, leading to water and air pollution.

Land has a value that can benefit humans in terms of production, location, environmental, social, and political value. With the continuous increase in land value due to human needs, there is a need for legal certainty regarding land. Therefore, land registration is essential because it leads to the issuance of a land certificate, which serves as proof of ownership for a particular land parcel.

Customary land is the ownership and control rights over a piece of land that exists within the customary community in the past and present. Some may not have authentic or written evidence of ownership, relying solely on oral acknowledgement.

To establish ownership rights over customary land, it is necessary to issue a land ownership certificate, which can be done by registering the land at the local Land Agency Office. However, there is a lack of awareness among the customary law community regarding the importance of land ownership status, leading to a lack of evidence for land ownership. This can result in disputes, especially when the community is unaware or lacks understanding of the law.

Land registration is a continuous and systematic series of activities carried out by the government, involving processing, bookkeeping, presentation, and maintenance of physical and juridical data in the form of maps and registers concerning land parcels and housing units, including the issuance of proof of ownership certificates for existing land rights and ownership of housing units along with specific encumbrances.

One of the purposes of land registration for landowners is to provide legal certainty and protection of their rights over a land parcel, enabling them to engage in legal activities involving the land, such as buying and selling, exchanging, gifting, inheriting, endowing, and others.

Despite the numerous benefits of land registration, many landowners have not registered their land. This indicates a low level of awareness among the community about the importance of land registration and the challenges involved in the registration process. These issues can be attributed to a lack of knowledge among the community regarding the significance of land registration, while one of the objectives of land registration is to provide legal certainty for a land parcel.

The National Land Agency (BPN) has the main task of providing land services to the community. Therefore, it is reasonable that the implementation of BPN's duties always receives public attention. Consequently, efforts to enhance land services should be given attention. Improving land services to the community involves various aspects, from policy-making, including the issuance of necessary regulations, to implementation. In order to enhance service to the community, the government has established policies for land management and development.

To regulate land rights, the government has enacted Law No. 5 of 1960 concerning Basic Agrarian Principles (the Basic Agrarian Law), with the aim of providing legal certainty regarding land rights throughout Indonesia. This legal certainty is stated in Article 19, paragraph (1) of the Basic Agrarian Law, which states: "To guarantee legal certainty of land rights, the government shall conduct land registration in the entire territory of the Republic of Indonesia in accordance with government regulations."

Article 19 assigns the government the responsibility of conducting land registration to ensure land rights certainty in Indonesia. Land registration serves to determine the status of land parcels, identify the owners, establish their rights, and determine the purpose of land use.

Article 19 of the Basic Agrarian Law states the following:

- To ensure legal certainty, the government conducts land registration in the territory of the Republic of Indonesia according to the provisions regulated by the Law.
- The registration mentioned in paragraph (1) of this article includes:
- Land surveying, mapping, and bookkeeping.
- Registration of land rights and the transfer of those rights.
- Issuance of strong evidence certificates, which serve as proof of ownership.
- Land registration is carried out considering the state and societal conditions, socio-economic traffic requirements, and the feasibility of its implementation, as determined by the Minister of Agrarian Affairs.
- Government regulations determine the associated costs of registration mentioned in the above paragraph (1), with the provision that the financially disadvantaged population is exempted from paying those costs.

Thus, it can be affirmed that the Basic Agrarian Law has determined the necessity of land registration, leading the government to issue Government Regulation No. 24 of 1997 concerning Land Registration. The implementation of land registration, aimed at achieving guarantees and legal certainty of land rights, involves land surveying, mapping, and the administration of land rights, which establishes a legal relationship between individuals or legal entities and a tangible object that confers authority over the land parcel and obliges others to respect it due to ownership rights.

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Article 19 of the Basic Agrarian Law assigns the government the responsibility to carry out land registration. Land registration serves to determine the status of land parcels, identify the owners, establish their rights, determine the area, and ascertain the purpose of land use. To obtain legal validity, a systematic series of land registration activities require the submission of substantive evidence, including physical and juridical data of land rights and/or the historical origin of land ownership, such as through sale or inheritance, in accordance with applicable laws and regulations.

Although the Basic Agrarian Law and Government Regulation No. 24 of 1997 have regulated land registration, in reality, many lands in Indonesia, especially customary lands, remain unregistered. This is due to several factors, including the limited knowledge of the community regarding the benefits and procedures of land registration. Therefore, the author is interested in addressing and discussing the procedures for registering customary lands in accordance with Government Regulation No. 24 of 1997.

Based on the aforementioned issues, the problems to be discussed are as follows:

What are the procedures for registering customary lands according to Government Regulation No. 24 of 1997?

2. Overview of Indigenous Land Rights

2.1. Customary Rights

Customary rights refer to collectively owned land believed to be a gift from supernatural forces or an inheritance from ancestors to a group recognized as the customary law community, serving as a primary supporting element for the group's livelihood throughout time. From the perspective of customary law communities, the land may be controlled by a single customary law community or multiple communities.

Article 5 of Law No. 5 of 1960 concerning the Basic Agrarian Principles (Basic Agrarian Law) states: "The agrarian law applicable to land, water, and airspace is customary law as long as it does not contradict the National and State Interests, based on national unity, Indonesian socialism, and the regulations stipulated in this law and other legislation, considering elements based on religious law."

Article 3 of the Basic Agrarian Law states, "Taking into account the provisions in Articles 1 and 2, the implementation of customary rights and similar rights of customary law communities, as long as they still exist in reality, must be arranged in such a way that it is in line with national and state interests, based on national unity and not in contradiction with higher laws and regulations."

Based on the above Article 3, the existence of customary rights or rights to customary land is recognized, but this recognition is subject to certain conditions, including:

- Its existence still persists.
- It does not contradict national interests.
- It does not contradict the rules of the law.

These provisions are based on the acknowledgment of the existence of customary rights in agrarian law (Basic Agrarian Law). As customary rights are mentioned in the Basic Agrarian Law, which essentially implies recognition of those rights, customary rights will be taken into account as long as they still exist within the relevant customary law community.

As customary rights are mentioned in the Basic Agrarian Law, which essentially implies recognition of those rights, customary rights will be taken into account as long as they still exist within the relevant customary law community. For example, in granting rights to land, the opinions of the relevant customary law community will be heard, and they will be given the recognition they deserve as holders of customary rights.

National land law recognizes the existence of rights to customary land as stipulated in the Basic Agrarian Law. The recognition of the existence of customary land rights by the Basic Agrarian Law is reasonable because rights to customary land, along with customary law communities, existed prior to the formation of the Republic of Indonesia on August 17, 1945.

Article 3 of the Basic Agrarian Law confirms this recognition, taking into account the provisions in Articles 1 and 2 of the Basic Agrarian Law. The implementation of customary rights and similar rights to customary land by customary law communities, as long as they still exist in reality, must be arranged in such a way that it is in line with national and state interests, based on national unity, and not in contradiction with higher laws and regulations. It is clear that rights to land are recognized with certain limitations regarding their existence and implementation.

In general, the concept of rights to customary land pertains to the legal relationship between customary law communities and the land within their territory. This legal relationship entails authority and obligations.

2.2. Individual Rights

According to *Ter Haar*, the relationship between individual interests and communal interests is reciprocal and possesses equal power. Furthermore, customary rights also apply to outsiders. If outsiders wish to enter the community, they must first obtain permission from the head of the community, and before their request is granted, they must give something to the community.

The term 'rights to customary land' in juridical technical terms refers to the inherent rights and powers of indigenous law communities to manage and regulate land within and outside their community.

Rights to customary land are an inseparable part of indigenous law communities. Regarding the position of land within the genealogical communal law community, these rights do not exist. In many places, land is considered sacred, so according to customary law, the relationship between humans and their land is cosmically religious, not only between the individual concerned but also between the members of the indigenous law community (*rechsgemeenschap*) in relation to rights to customary land.

The customary law conception regarding this is a communalistic religious conception that allows individual ownership of land, with rights to land that are both personal and communal. The communalistic nature refers to the collective rights of the members of the indigenous law community over the land, which in legal terms is called '*Hak Ulayat*.'

'*Hak Ulayat*' is a collectively-owned right believed to be a mystical gift from ancestors to the indigenous law community, serving as the main supporting element for the life and livelihood of the group throughout time.

Rights to land can also apply to outsiders, i.e., individuals who are not members of the community. If outsiders wish to enter the community's territory, they must first obtain permission from the head of the community, and before their request is granted, they must give something to the community. The community is also responsible for violations or crimes that occur on customary land or by unknown individuals.

With the establishment of rights to customary land, every member of the community has the right to establish a legal relationship with the land and everything on it. Community members have a specific relationship with customary land. This relationship can take the form of individual rights to land, which arise when individuals establish a legal relationship with the land.

In the customary law system of land ownership, the highest form of land ownership is rights to customary land, which includes two aspects: private law and public law. The subjects of rights to customary land are the indigenous law community, both territorial and genealogical, as a collective form of its members.

Customary land is the land owned collectively by the members of the respective indigenous law community. Customary land originates from the customary head and elders, who are authorized officials of the indigenous law community responsible for managing, regulating, and leading the allocation, use, and preservation of the collective land.

There are various rights to land owned by the members of the respective indigenous law community. All of these rights, directly or indirectly, stem from customary rights as collective rights. Therefore, the structure and hierarchy of land ownership rights in customary law are as follows:

- Rights to customary land of the indigenous law community, as the highest form of ownership, with aspects of private law and public law.
- Rights of the customary head and elders, which derive from rights to customary land and are solely based on public law.
- Rights to land as individual rights, directly derived from rights to customary land and primarily based on private law.

2.3. Legal Status of Customary Land with the Birth of the Basic Agrarian Law

The customary law referred to in the Basic Agrarian Law is the law that applies to the indigenous people, which is a living law in the form of unwritten customs and contains original national elements, namely the communal and familial nature, based on balance and enveloped in a religious atmosphere.

In the considerations of the Basic Agrarian Law, it emphasizes the key role of land, stating that land, water, and airspace have a crucial function in building a just and prosperous society. In this context, the control over land is primarily focused on achieving justice and prosperity in community development.

The recognition of the existence of 'Ulayat' rights in the Basic Agrarian Law is reasonable because ulayat rights, along with customary law communities, existed before the formation of the Republic of Indonesia on August 17, 1945. Article 3 of the Basic Agrarian Law reaffirms this recognition by stating that, considering the provisions in articles 1 and 2, the exercise of 'Ulayat' rights and similar rights by customary law communities, as long as they still exist in practice, must be arranged in such a way that it is in line with national and state interests, based on national unity and not conflicting with higher laws and regulations.

2.4. Proof of Land Rights

According to Article 23 of Government Regulation No. 24 of 1997, the proof of land rights is as follows:

- New land rights are proven by:
 - Determination of the granting of rights by the authorized official according to the applicable provisions if the rights are derived from state land or management rights.
 - Original Documents of The Land Deed Official that contain the granting of rights by the titleholder to the respective rights recipient in the case of building rights and land use rights on land with ownership rights.
 - Management rights are proven by the determination of the granting of management rights by the authorized official.
 - 'Wakaf' land is proven by a 'wakaf' deed.
 - Ownership rights to apartment units are proven by a separation deed.
 - Granting of encumbrances is proven by an encumbrance deed.
- Furthermore, Article 24 of Government Regulation No. 24 of 1997 states:
- For the purpose of registering rights, land rights derived from the conversion of old rights are proven by means of evidence regarding the existence of such rights in the form of written evidence, testimony of witnesses, and statements by the concerned parties, the truth of which is assessed by the Adjudication Committee in systematic land registration or by the Head of the Land Office in sporadic land registration, which is deemed sufficient to register the rights, the right holders, and other rights burdening the land.
 - In case the complete evidence, as referred to in paragraph (1), is not available or no longer available, the proof of rights can be based on the physical possession of the land area concerned for a period of 20 (twenty) consecutive years or more by the registration applicant and their predecessors, provided that:
 - The possession is carried out in good faith and openly by the rightful person, supported by the testimony of trusted individuals.
 - The possession is not disputed by the customary law community or the respective village, or other parties, both before and during the announcement, as referred to in Article 26.

From the above description, it can be asserted that a landowner already possesses strong and definite evidence that they actually possess and control a piece of land with clear boundaries, and there is a statement that the land is not in dispute with others and is not used as collateral to anyone.

When it comes to evidence in civil law, the Land Certificate can be served as a proof. Article 163 of the Civil Code states: "Anyone who claims to have a right or asserts an act to establish their right or dispute the right of others must prove that right or the existence of that act."

Therefore, a Land Certificate is a document that serves as evidence of ownership rights to a piece of land in accordance with the provisions of Articles 23 and 24 of Government Regulation No. 24 of 1997 concerning Land Registration.

In essence, documents consist of ordinary letters, authentic deeds, and private deeds. An ordinary letter is not intended to be used as evidence. If it is later used as evidence, it is purely coincidental, unlike an authentic or private deed, which is intentionally made to serve as evidence of a person's possession or ownership of a right.

3. Land Registration for Legal Certainty

3.1. Definition of Land Registration

Article 1 of Government Regulation No. 24 of 1997 states: Land registration is a series of continuous, continuous, and systematic activities conducted by the government, which include the collection, processing, bookkeeping, presentation, and maintenance of physical and juridical data, in the form of maps and lists, regarding land parcels and condominium units, including the issuance of certificates for land parcels that have established rights and condominium units and the encumbrances on them.

According to Boedi Harsono: "Land registration is an ongoing and systematic activity carried out by the state/government, involving the collection of specific information or data about specific lands in certain regions, their processing, storage, and presentation for the benefit of the people, in order to provide legal certainty in the field of land, including the regulation of evidence and its maintenance."

Furthermore, according to Boedi Harsono, based on the above definition of land registration, the elements of land registration can be mentioned as follows:

- A series of activities - indicating that the activities carried out in land registration involve gathering both physical and juridical data on the land.
- The government - indicating that there is a specific institution with authority and competence for land registration, namely the National Land Agency (BPN).
- Systematic and continuous - indicating that the land registration process is based on legal regulations and is carried out continuously, not ceasing until a person obtains evidence of rights.
- Land data - indicating that the initial result of the land registration process is the production of physical and juridical data. Physical data includes information about the location, boundaries, building area, and existing vegetation. Juridical data includes information about the rights, such as the type of rights and the rights holder, among others.
- Region - can refer to the administrative registration area covering the entire country.
- Specific lands - related to the objects of land registration.
- Evidence - the existence of ownership rights in the form of certificates.

The registration will be carried out taking into account the interests and conditions of the country and society, the needs of socio-economic activities, and the possibilities in terms of personnel and equipment. Therefore, its implementation will be prioritized in cities and gradually expanded to cover the entire country.

This registration is governed by precise and well-directed provisions, so it is not arbitrary or solely aimed at issuing evidence of land registration. It is essential to consider the material aspects of each right to minimize the possibility of future legal disputes from individuals claiming superior rights.

Effendie Perangin argues that:

Land registration is an obligation that must be continuously carried out by the government to inventory data related to land rights according to the Basic Agrarian Law and Government Regulations on land registration. Registration of land rights is an obligation that must be fulfilled by the respective rights holders and continuously implemented whenever there is a transfer of those land rights to inventory data related to the transfer of land rights according to the Basic Agrarian Law and Government Regulations on land registration to obtain strong evidence of land rights in the form of a certificate.

Land registration, which aims to provide legal certainty, is known as the *legal kadaster/rechts cadaster*. The legal certainty to be achieved in this land registration includes the certainty of the registered rights status, the certainty of the rights subject, and the certainty of the rights object. This land registration results in a certificate as evidence of the rights. The opposite of the *rechts kadaster* land registration is the *fiscal cadaster*, which aims to determine who is responsible for paying taxes on the land. "Land registration is carried out to provide certainty to the land rights holders, which can be measured by the legal strength of the certificate as strong evidence, the accuracy of the data, and the opportunity for claims from other parties who claim superior rights to the land."

This registration is governed by meticulous and directed provisions, so it is not arbitrary, and its purpose is not solely to issue evidence of land registration. It is necessary to consider the material issues within each right to minimize the possibility of future claims from individuals who believe they have superior rights.

Article 19 of the Basic Agrarian Law states the following:

- To ensure legal certainty, the government conducts land registration throughout the territory of the Republic of Indonesia in accordance with the provisions set forth by the law.

- The registration mentioned in paragraph (1) of this article includes:
- Land measurement, mapping, and bookkeeping.
- Registration of land rights and the transfer of those rights.
- Issuance of strong evidence certificates as legal proof.
- Land registration is conducted taking into account the conditions of the country and society, the needs of socio-economic activities, and the possibilities of implementation according to the balance determined by the Minister of Agrarian Affairs.
- Government regulations stipulate the relevant costs associated with the registration mentioned in paragraph (1) above, with the provision that those who are unable to pay the fees are exempted.

3.2. *Benefits of Land Registration Implementation*

One of the government's tasks as a state institution is to provide legal protection for the lives and properties, both movable and immovable, of the public. The legal protection provided by the government for land is realized through land registration programs. Land registration provides clarity of land ownership, which can reduce land conflicts among communities and with the government. The detailed benefits of land registration are as follows:

- For the community:
 - Provides legal certainty for land certificate holders, avoiding disputes that commonly arise in rural communities regarding land issues. Land boundary issues can also lead to conflicts. With a certificate as proof of land ownership that contains juridical and technical data, such disputes can be prevented or avoided.
 - Facilitates access to land data for parties in need through the National Land Agency.
- For the government:
 - Ensures organized land administration, allowing quick access to registered land data by the government.
 - Increases state revenue through registration fees.
 - Increases state revenue through property taxes (land and building tax).

Land registration also aims to create a central information hub regarding land, enabling stakeholders, including the government, to easily obtain the necessary data for legal transactions related to land.

A.P. Parlindungan commented on the benefits of land registration, stating, "Land registration is not only for legal certainty but also for legal protection for the owners."

3.3. *Officials and Documents Related to Land Registration*

With the issuance of Presidential Decree of the Republic of Indonesia, Number 26 of 1988, regarding the National Land Agency (BPN), particularly as regulated in Article 37/1, the tasks and functions of land registration, previously under the Ministry of Home Affairs and implemented by the Directorate General of Agrarian Affairs, were transferred to the BPN since November 21, 1988, the inauguration date of the Head of the National Land Agency.

Regarding the tasks, functions, and authorities of land registration, they can be explained as follows:

- At the BPN headquarters, land registration is handled by the Deputy for Surveying and Land Registration, assisted by:
 - Director of Surveying and Mapping.
 - Director of Land Registration.
- At the provincial level, land registration is managed by the Head of the Department of Surveying and Land Registration within the National Land Agency Provincial Office, assisted by:
 - Head of the Surveying Section.
 - Head of the Mapping Section.
 - Head of the Land Registration and Land Information System Section.
 - Head of the Transfer Of Rights Section, Encumbrance Of Rights Section, And Officials Authorized To Make Land Deeds.
- At the district/city level, land registration is handled by the Head of the Surveying and Mapping Section within the local Land Office, assisted by:
 - Head of the Sub-Section for Surveying, Mapping, and Conversion.
 - Head of the Sub-Section for Land Registration and Land Information.
 - Head of The Sub-Section For Transfer Of Rights, Encumbrance Of Rights, And Officials Authorized To Make Land Deeds.

Based on Article 9 of government regulation no. 24 of 1997, land registration is carried out by the national land agency (BPN), and according to Article 6(1) of the same government regulation, the implementation of land registration is conducted by the head of the land office, except for certain activities assigned to related officials by this government regulation or relevant legislation.

Specific activities related to land registration are assigned to other officials. These activities include those of national significance or beyond the jurisdiction of the head of the land office, such as the surveying of technical base points and photogrammetric mapping. The officials involved in land registration are as follows:

- Officials Authorized to Make Land Deeds: Their role is to create deeds of transfer of rights, except for auction deeds and deeds granting Mortgage Rights or ownership rights to strata title units.

- Officials Authorized to Make Wakaf (Endowment) Deeds: Their role is to create 'Wakaf' (Endowment) Deeds for ownership rights to land.
- Officials from the Auction Office: Their role is to create auction reports or minutes for land rights or ownership rights to strata title units.
- Adjudication Committee: Their role is in systematic land registration. The Adjudication Committee carries out all activities in land registration systematically, from the initial stages to the issuance of land certificates.

Land Registration Office in each district/city, which is a vertical institution of the National Land Agency (BPN) at the district/city level, is led by a head who directly reports to the regional head of the BPN Provincial Office. This office has three main tasks as follows:

- Prepare activities in the field of land control, land use, management of land rights, surveying, and land registration.
- Implement services in the field of land control, management of land rights, surveying, and land registration.
- Handle administrative and household affairs.

When there are land-related issues, the responsible party here should be the Land Office, in line with the principle of responsibility that should be undertaken by the respective Land Office.

In addition, there are documents related to land registration according to Government Regulation No. 24 of 1997, which are as follows:

- Land register: a document in the form of a list that contains the identity of a land parcel with a numbering system.
- Survey letter: A document that contains the physical data of a land parcel in the form of a descriptive map.
- Name list: A document in the form of a list that contains information about physical control with a right to the land or management right and ownership of strata title by individuals or specific legal entities.
- Land book: A document in the form of a register that contains juridical data and physical data of a registered land object with its respective rights.

To go through the land registration process, applicants/registrants must fulfill several documents as requirements that need to be prepared and needed in the land registration process. The things that need to be prepared by the applicant/registrant of land rights are as follows:

- Proof of identity of the applicant and the original owner of the registered land rights.
- Completeness of proof of origin or land history.
- Proof of tax payment, transfer duty for land rights.

The same applies to customary land recognized through the procedure of obtaining land certificate rights at the Land Office. The requirements that must be fulfilled include:

- Letter of application.
- Copy of the applicant's ID card or identification document.
- Copy of the ID card or identification document of the authorized recipient, along with a power of attorney if the applicant is authorized.
- Copy of the current year's Property Tax Payment Letter (SPPT PBB).
- Written proof of original land, including:
 - A letter of declaration of physical land possession for 20 (twenty) years, made by the landowner and witnessed by two (2) known witnesses recognized by the village or sub-district.
 - A certificate from the Village Chief or Sub-District Head, witnessed by two (2) witnesses and verified by the local customary leader.

4. Procedures for Issuing Certificates of Customary Land Rights According to Government Regulation No. 24 of 1997

Land registration in Indonesia follows a negative system with a positive tendency. Negative means that the state does not guarantee the absolute accuracy of the data contained in the land registration. In this case, it is still possible for third parties to file claims against the land rights registered by the applicant or land rights registrant. On the other hand, positive means that although the absolute accuracy of the data is not guaranteed, the government still provides strong recognition to the registered land data, thereby giving it strong evidentiary value.

A land certificate is a proof of ownership or possession of land and is the final product of a land registration process. With the issuance of GOVERNMENT REGULATION No. 24 of 1997, it is expected that legal certainty in the field of land tenure, especially the legal certainty of land rights in the territory of the Republic of Indonesia, can be ensured.

To guarantee such legal certainty, Article 19 Paragraph (2) of the Basic Agrarian Law further emphasizes that land registration is carried out through the following procedures:

- Measurement, mapping, and land bookkeeping.
- Registration of land rights and their transfers.
- Issuance of valid proof of rights in the form of strong evidence.

Land registration is the recording of the identity of a piece of land at the land office of the city or district, which will ultimately result in the issuance of a certificate as a strong proof, clearly indicating the types of rights, boundaries, conditions, location, and ownership of the land.

The issuance of certificates of customary land rights is regulated by Government Regulation No. 24 of 1997. The steps to be taken for issuing certificates for customary land are as follows:

- Declaration letter from the heirs, acknowledged by the Village Head or Sub-district Head and District Head.

- Transfer of rights letter from the heirs to one of the heirs/declaration letter from other heirs, acknowledged by the Village Head or Sub-district Head.
- Certificate issued by the applicant for the certificate of customary land rights, presented to the National Land Agency office.
- The National Land Agency will form Committee "A," which is responsible for conducting land measurement in the issuance of certificates for customary land rights that have the corresponding declaration letters.
 - Declaration letter of heirs acknowledged by the Village Head or Sub-district Head and District Head includes:
 - Letterhead
 - Certificate
 - Letter number
 - Name, age, occupation, and address
 - Letter content
 - Description of the area and signature
 - After the issuance of this certificate, a declaration letter of heirs is issued for the transfer of rights from other heirs, acknowledged by the Village Head or Sub-district Head, including:
 - Title of the letter (declaration letter of heirs)
 - Letter content or statement from the heirs, including their names and addresses.
 - Signatures of the heirs with an affixed stamp.
 - Signatures of witnesses.
 - Letter number and date of issuance.
 - Signatures of the Village Head and District Head.
 - After the declaration letter of heirs is issued, a physical acknowledgment letter regarding the land is issued, including:
 - Title of the letter (physical possession declaration letter).
 - Letter content, including names, ages, occupations and addresses.
 - A statement including a description of the land's condition and location, such as the neighborhood, sub-district, district and land area.
 - Land boundaries.
 - Agreement details.
 - Witness signatures.
 - Signatures of the Village Head and District Head.
 - In addition to the physical possession declaration letter, the first party provides an explanation about the acknowledgment from the involved parties, including:
 - Title of the letter (declaration or acknowledgment letter).
 - Information about the landholder, including their name, age, occupation, address, and the status and location of the land.
 - Details about the land's boundaries and area.
 - Letter content (acknowledgment).
 - Signatures of witnesses, the Village Head, and the District Head.
 - With the complete documentation of the certificate, declaration letter of heirs, physical possession letter, and acknowledgment letter, the first party creates a land transfer letter, including:
 - Title of the letter (Inheritance Land Transfer).
 - Signature of the heir with a copy of their ID card attached.
 - Information from the involved parties.
 - Signatures of witnesses.
 - Signature of the Village Head.
 - A certificate application letter made by the applicant for the certificate of customary land rights addressed to the National Land Agency office includes:
 - Application
 - Applicant's personal information:
 - ✓ Name and date of birth
 - ✓ Nationality and/or ID card or a letter of identification from the Village Head
 - ✓ Occupation
 - ✓ Residence
 - ✓ Family composition, including spouse and dependent children
 - Information about the applied land:
 - ✓ Location
 - ✓ Area
 - ✓ Boundaries
 - ✓ Land status (rights attached to the land)

- ✓ Land type and condition
- ✓ Basis of possession
- ✓ Intended use
- Lands owned by the applicant (land status, area, and location, mentioning only the district/city)
- Attached documents:
 - ✓ Photocopy of ID card/other identification proof
 - ✓ Certificates, land ownership documents, Village Head's letter, proof of release acquired from the government, land deed, release of rights deed, court decision
 - ✓ Copy of survey map/site plan
 - ✓ Building permit
 - ✓ Declaration letter of land possession (for institutions)
 - ✓ Applicant's declaration regarding the number of parcels, area, and status of owned land
 - ✓ Release letter for forest and institutional areas
 - ✓ Government's land designation or transfer letter
 - ✓ Other relevant documents
- Applicant's signature: After the applicant completes the document requirements, the National Land Agency forms Committee "A," which consists of:
 - ✓ Head of the land rights and land registration section at the land office
 - ✓ Head of the survey, measurement, and mapping section at the land office
 - ✓ Head of the planning and organization section at the land office
 - ✓ Village Head in the respective sub-district and the related district
 - ✓ Head of the land rights determination sub-section at the district land office, serving as the secretary and member.

From the data collected above, if it is complete and meets the requirements, a certificate of customary land rights will be issued, which can be used in the future to perform actions on the land, such as buying and selling, gifting, and others.

Land registration implementation includes systematic land registration and sporadic land registration. Systematic land registration is the initial registration of all land objects simultaneously within a village or sub-district that have not been registered.

Systematic registration is initiated by the government based on a long-term and annual work plan and is carried out in designated areas determined by the Ministry of Agrarian Affairs or the head of the National Land Agency. If a village or sub-district has not been designated for systematic land registration, sporadic registration is carried out.

Sporadic registration is the initial registration of one or several land objects within a village or sub-district on an individual basis. Sporadic land registration is carried out upon the request of the interested party who has the rights to the respective land object.

Systematic land registration is prioritized because it accelerates the acquisition of data about the land parcels to be registered compared to sporadic registration. However, since it is initiated by the government, it requires time to secure funding, manpower, and necessary equipment. Thus, it should be based on a long-term work plan and an annual implementation plan to ensure smooth execution.

Alongside systematic land registration, sporadic land registration will also be enhanced due to increasing demands for individual and mass registrations needed for the growing development activities.

The registration system used in land registration is the title registration system, as stated in the Government Regulation No. 10 of 1961. This is evident through using a land book as a document containing juridical and physical data that is collected, presented, and issued as a certificate as evidence of registered land rights.

In accordance with Article 19 of the Basic Agrarian Law, the government is obliged to provide legal certainty for a land parcel by conducting land registration. The National Land Agency (BPN) plays a significant role in carrying out both sporadic and systematic land registration. However, in sporadic land registration, the proactive role lies with the land rights holders.

According to Article 31 of Government Regulation No. 24 of 1997, for the benefit of the relevant rights holders, certificates are issued based on the physical data contained in the survey document and the juridical data registered in the land book.

The requirements for applying for land registration for ownership rights include:

- Extract of village book "C" issued by the local village registry,
- Photocopy of the landowner's ID card,
- Photocopy of the landowner's family card,
- Photocopy of the land's property tax receipt or proof of payment,
- Declaration letter from the landowner stating that the land is not in dispute.

To anticipate any possible disputes, the law requires landowners to register their land rights to prevent any future detrimental consequences, as stated in Article 4(3) of Government Regulation No. 24 of 1997, which states: "To achieve administrative order for every land parcel and apartment unit, including the transfer, encumbrance, and termination of rights over land parcels and ownership rights over apartment units, registration is mandatory."

Therefore, the rights to a land parcel must be registered at the local land office where the land is located. Apart from being the obligation of the land rights owner, this registration is also carried out to comply with Article 3(c) of Government Regulation No. 24 of 1997, which states: "Land registration aims to ensure the orderly administration of land." Thus, by registering the ownership rights to a land parcel, the owner obtains certainty, strength, and legal protection for their land ownership.

Based on the aforementioned explanation, it can be emphasized that the purpose of land registration is to provide certainty regarding the land object and ensure the certainty of the subject, which includes:

- Surveying, mapping, and bookkeeping that result in registration maps and survey documents. These maps and survey documents provide information about the exact measurement and boundaries of the respective land parcel.
- Registration of land rights and the transfer of those rights, including the registration and recording of other rights (both land rights and securities) and any other burdens that affect the registered land rights. In addition to providing information about the status of the land, this registration provides details about the subject of the rights and who is entitled to the land in question.
- Issuance of proof of rights documents, which, according to Article 19(2), serve as strong evidence.
- Meanwhile, during the implementation of land registration, one of the provisions that need to be considered is the installation of boundary markers, as mentioned in Article 17 of Government Regulation No. 24 of 1997, which includes:
 - To obtain the necessary physical data for land registration, land parcels that will be surveyed and measured must have boundary markers placed at each corner of the respective land parcel after determining their location and based on their necessity.
- In the placement of land boundaries during systematic and sporadic land registration, efforts are made to arrange the boundaries based on the agreement of the interested parties.
 - The placement and maintenance of boundary markers are the responsibility of the land rights holder.
 - The form, size, and technical aspects of boundary marker placement are determined by the minister.
 - Based on these provisions, land rights holders have an obligation to install or place boundary markers. By fulfilling this obligation, they can ensure the proper demarcation of their land boundaries.

5. Conclusion and Suggestions

5.1. Conclusion

The land registration procedure for customary land, according to Government Regulation No. 24 of 1997, involves the registration of land for the first time (initial registration), which refers to the registration of land objects that have not been registered based on Government Regulation No. 10 of 1961, replaced by Government Regulation No. 24 of 1997.

The initial land registration is carried out through systematic and sporadic land registration. Systematic land registration is initiated by the government, while sporadic land registration refers to individual or mass registration based on the request of interested parties.

- To ensure legal certainty, Article 19(2) of the Basic Agrarian Law emphasizes that land registration is carried out through:
 - Land surveying, mapping, and bookkeeping.
 - Registration of land rights and their transfers.
 - Issuance of proof of rights documents that serve as strong evidence.

According to Government Regulation No. 24 of 1997, there are specific requirements for issuing certificates of customary land rights. Some of the necessary requirements for registering customary land ownership include:

- Letter of application.
- Copy of the applicant's ID card or identification document.
- Copy of the ID card or identification document of the authorized recipient, along with a power of attorney if the application is delegated.
- Copy of the current property tax payment receipt (PBB).
- Written proof of the original land, accompanied by:
 - A declaration of physical land possession for 20 years made by the landowner, witnessed by two (2) individuals and acknowledged by the Head of the Village or Sub-district.
 - A certificate from the Sub-district Head, witnessed by two (2) individuals and validated by the local customary leader.

After the applicant completes the required documentation for land registration, the National Land Agency forms Committee "A." Subsequently, if the collected data is complete and meets the criteria, a certificate of customary land rights is issued, which can be used for various purposes in the future, such as sales and others.

5.2. Suggestions

The following recommendations should be implemented:

- There is a need to increase awareness through education provided by the Land Office, in collaboration with local authorities at the district and sub-district levels, as well as existing community-based organizations, regarding

land registration, its importance, and the procedures involved. This will encourage indigenous communities to promptly register their lands.

- The availability of professional experts and necessary resources for land registration is crucial.
- The government should focus on improving systematic registration, particularly in areas where the registration rate among the local population is still significantly low.

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