

LEGAL CERTAINTY AND AGRARIAN JUSTICE REGARDING THE POLICY OF ERASING WRITTEN EVIDENCE OF LAND FORMERLY CUSTOMARY

Viridy Varlucy Watdi, Gunawan Djayaputra

Fakultas Hukum Universitas Tarumanagara

Email : gunawand@fh.untar.ac.id

Received : 01 October 2025
Revised : 10 October 2025
Accepted : 15 November 2025

Published : 19 December 2025
DOI : <https://doi.org/10.54443/morfai.v5i6.4566>
Publish Link : <https://radjapublika.com/index.php/MORFAI/article/view/4566>

Abstract

The policy of eliminating written proof of ownership for former customary land, such as Girik, Petok D, Letter C, and Ketitir, as specified in Government Regulation Number 18 of 2021, has various implications for legal certainty and agrarian justice. This study aims to analyze the impact of this policy on the land ownership status of customary communities and small-scale farmers. The research employs a normative juridical method with a legislative and case study approach. The findings indicate that this policy may increase legal uncertainty for landowners without certificates, complicate the process of proving land rights, and potentially exacerbate agrarian inequality. To address these issues, solutions such as accelerating free land registration, enhancing public awareness, and strengthening the role of local governments and customary institutions in facilitating land ownership legalization are needed. With a more inclusive and equitable approach, this policy can be implemented without ignoring the rights of customary communities while remaining aligned with the principles of agrarian justice and legal certainty.

Keywords: *Legal certainty, Agrarian justice, Land evidence, Land policy.*

I. INTRODUCTION

Land is a resource that plays a crucial role in human life. Besides being used as a place to live, land also plays a key role in various fields, such as agriculture, development, and economic activities. Over time, demand for land continues to increase, while its availability remains limited. This situation makes land a valuable asset that requires careful and sustainable management to ensure its optimal and equitable use. Based on this, the government is responsible for regulating the land system so that its use can be carried out fairly and well-organized. In the context of land management, a strong legal basis is needed so that the state has the authority to regulate and oversee land use.¹The legal basis for land management in Indonesia is Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA). This regulation establishes fundamental principles regarding land ownership, use, and management with the aim of creating justice within the agrarian system and ensuring legal certainty for all citizens.

The primary principle in land management is that its use must be directed towards achieving equitable public welfare. Land ownership should not be confined to a small group of individuals, but should be a shared asset for the entire Indonesian nation. Therefore, land must have a social function, meaning its ownership must prioritize collective interests over personal ones.²The state recognizes the ownership and control of land by individuals and legal entities while still taking into account the public interest. To realize this, an orderly and transparent land administration system is required, one of which is through a land registration mechanism. Every landowner, whether registered or not, needs to register their land. This registration provides official recognition and legal protection for land ownership from the state.³Land registration is a government effort to ensure legal certainty and protection for land rights holders. This process includes the initial recording of land rights and the maintenance of ownership data.⁴

¹ Andrew Grey and Widodo Suryandono, (2020), "Process of Cancellation of Land Ownership Certificate Due to Legally Defective Sale and Purchase Deed (Case Study of Decision Number 72/G/2018/PTUN.BDG)", Indonesian Notary: Vol. 2, No. 2, p. 793.

² Indah Sari, (2020), "Land Rights in Land Law in Indonesia According to the Basic Agrarian Law (UUPA)", Jurnal Mitra Manajemen, Vol. 9, No. 1, p. 15.

³ Noor Atikah, (2022), "The Position of Land Certificates as Proof of Land Ownership in the Indonesian Land Law System", Notary Law Journal, Vol. 1, No. 2, p. 217.

⁴ Isdiyana Kusuma Ayu, (2019), "Legal Certainty of Land Registration Through Complete Systematic Land Registration in Batu City", Mimbar Hukum: Faculty of Law, Gadjah Mada University, Vol. 31, No. 3, p. 339.

LEGAL CERTAINTY AND AGRARIAN JUSTICE REGARDING THE POLICY OF ERASING WRITTEN EVIDENCE OF LAND FORMERLY CUSTOMARY

Viridy Varlucy Watdin and Gunawan Djayaputra

In an effort to ensure legal certainty for land rights holders, the land registration process requires support from various parties, including the government, the community, and the rights holders themselves. Land registration aims to provide legal certainty, which is realized through the issuance of certificates as proof of ownership. These certificates provide legal protection for rights holders and guarantee the validity of their land rights.⁵ Certificates have various functions for their owners, but their main function is as strong evidence, as regulated in Article 19 paragraph (2) letter c of the UUPA. With a certificate, land owners can easily prove their ownership rights if their name is listed in the document. In addition, certificates also contain important information about the land, such as area, boundaries, and other aspects related to the land plot. If a dispute arises in court regarding land ownership or control, the data contained in the certificate has strong evidentiary power and must be accepted as valid information, unless there is other evidence to refute it.⁶

In civil law, written evidence plays a crucial role in proving land ownership, including land formerly owned by customary law. Formerly owned customary law land generally lacks a certificate of ownership issued by the National Land Agency (BPN). Therefore, proof of ownership often relies on administrative documents or traditional documents recognized in the Indonesian legal system, such as Girik (land title deed), Ketitir (land title deed), Petok D (land title deed ... These documents serve as preliminary evidence that can demonstrate the history of land ownership and transfer of rights before official certification. Although not absolute proof of ownership, these documents retain legal value and can be used as a basis for land registration at the National Land Agency (BPN) or as evidence in resolving land disputes in court. However, along with the development of the agrarian system in Indonesia, regulations related to land ownership and registration continue to change. One aspect of primary concern is the policy regarding the elimination of written evidence of former customary land ownership, as stipulated in Government Regulation (PP) Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration. This policy aims to increase legal certainty regarding land ownership and accelerate the national land certification process.

Referring to Article 96 paragraphs (1) and (2) of the Regulation, there is a provision that stipulates that written evidence of former customary land owned individually must be registered within a maximum period of five years from the enactment of this regulation. If this time limit is exceeded, the document will no longer have legal force as evidence of ownership of land rights. However, the document can still be used as a guide in the land registration process, but cannot be used as the main evidence to claim land rights.⁷The written evidence referred to includes Girik, Ketitir, Petok D, and also Letter C and other documents which are often understood and used by rural residents as proof of land ownership.⁸Thus, after five years since the regulation came into effect, these documents are no longer recognized as proof of land ownership.

This policy raises various issues, particularly those related to legal certainty and agrarian justice for communities who still rely on traditional documents as proof of land ownership. Many communities, particularly in rural areas, have not registered their land under modern certification systems. As a result, they face the risk of losing their land rights because the evidence they have used is no longer legally recognized. This situation has the potential to increase the number of land disputes and create legal uncertainty for customary landowners. Furthermore, this policy raises questions about agrarian justice, particularly for groups with limited economic and social access to land certificates. Eliminating written evidence without adequate solutions could exacerbate inequality in land ownership and threaten the rights of indigenous communities who have long inhabited an area. Therefore, an in-depth analysis is needed to assess the extent to which this policy guarantees legal certainty and reflects the principles of justice in Indonesia's agrarian system. Based on these issues, this study will examine the impact of the policy of eliminating written evidence of former customary land ownership on legal certainty and agrarian justice in Indonesia. This study aims to analyze its impact on legal certainty for landowners and assess its compliance with the principles of agrarian justice. It is hoped that the results will provide recommendations for improving land policy to achieve a more just and legally certain agrarian system.

⁵ Christiana Sri Murni and Sumirahayu Sulaiman, (2022), "Land Ownership Certificates Are Proof of Land Ownership Rights", *Lex Librum: Journal of Legal Studies*, Vol. 8, No. 2, p. 184.

⁶ Mulyadi and Satino, (2019), "Resolving Disputes over Dual-Certified Land Ownership", *Jurnal Juridical*, Vol. 6, No. 1, p. 151.

⁷Indonesia, *Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration*, Article 96.

⁸Fina Rohmatika, Malik Fahad, and Sumriyah, (2023), "Legal Power of Letter C as Evidence of Land Ownership Rights", *Khirani: Journal of Early Childhood Education*, Vol. 1, No. 2, p. 65.

LEGAL CERTAINTY AND AGRARIAN JUSTICE REGARDING THE POLICY OF ERASING WRITTEN EVIDENCE OF LAND FORMERLY CUSTOMARY

Viridy Varlucy Watdin and Gunawan Djayaputra

II. RESEARCH METHODS

This research uses a normative legal research approach. Normative legal research focuses more on approaches based on statutory regulations, leading to the growing view that normative research is synonymous with the study of applicable regulations.⁹This research applies both a statutory and case-based approach, examining the impact and implications of the policy of eliminating written evidence of former customary land. This approach does not focus on court decisions, but rather on analyzing the policies governing the elimination of written evidence of customary land and how those regulations are implemented.

The type of data used in this normative research is secondary data, which is divided into three legal materials, namely:

1. Primary Legal Materials

Primary legal materials include laws and regulations enacted by the state, including laws passed by legislative bodies, court decisions that have permanent legal force, and decisions issued by government administrative bodies.¹⁰The primary legal materials used in this research are:

- 1) Law Number 5 of 1960 concerning Basic Agrarian Regulations;
- 2) Civil Code (KUHPer);
- 3) Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration.

2. Secondary Legal Materials

Secondary legal materials are references that are not binding like primary legal materials, but serve to support and explain primary legal materials. These sources include draft regulations, academic writings by experts, and the results of various relevant studies.¹¹In the study of legal certainty and agrarian justice regarding the policy of eliminating written evidence of land formerly owned by customary law, secondary legal materials are used to strengthen the analysis of the impact of this policy on the national agrarian system and the rights of the affected communities.

3. Tertiary Legal Materials

Tertiary legal materials are reference sources that help provide further understanding of primary and secondary legal materials.

III. RESEARCH RESULTS AND ANALYSIS

A. Written Evidence in Proving Land Rights

The evidentiary stage plays a crucial role in civil court cases, determining the truth of a case. Through this stage, the judge can assess the validity of the arguments presented and render a decision in accordance with the principles of justice. The evidentiary procedure in civil law is regulated by the Civil Procedure Code and is influenced by various Supreme Court (MA) jurisprudence. During the trial process, the evidentiary stage is a determining factor in determining whether a lawsuit has a strong legal basis based on the evidence presented.¹² The primary purpose of proving evidence is to ensure justice and legal certainty. Therefore, the evidence presented must meet the requirements of relevance, validity, and high credibility to be admissible in the legal process.¹³Evidence plays a fundamental role in the trial process, as it is used by judges as a basis for their decision. Evidence is the means or means presented by the parties to a case and used as the basis for the judge's decision.¹⁴ Provisions regarding evidence are regulated in Article 1866 of the Indonesian Civil Code and Article 164 of the Indonesian Criminal Code (HIR), which cover various types of evidence, including written evidence. Written

⁹Muhammad Zainuddin and Aisyah Dinda Karina, (2023), "The Use of Normative Juridical Methods in Proving Truth in Legal Research", *Smart Law Journal*, Vol. 2, No. 2, p. 118.

¹⁰ I Made Pasek Diantha, *Normative Legal Research Methodology in Justifying Legal Theory*, (Jakarta: Prenada Media, 2016), p. 142.

¹¹ Kornelius Benuf & Muhammad Azhar, (2020), "Legal Research Methodology as an Instrument for Analyzing Contemporary Legal Problems," *Jurnal Gema Keadilan*, Vol. 7, No. 1, p. 26.

¹² Fauziah Lubis and Fahrul Raji Khassa, (2024), "Proof Procedures in Civil Procedure Law", *Journal of Law and Public Policy*, Vol. 6, No. 3, p.359.

¹³Ibid.

¹⁴Dea Mahara Saputri and Abdul Azis, (2023), "The Position of Evidence in Civil Procedure Law as an Implementation of Legal Certainty," *Rechtsregel: Journal of Legal Studies*, Vol. 6, No. 2, p. 212.

LEGAL CERTAINTY AND AGRARIAN JUSTICE REGARDING THE POLICY OF ERASING WRITTEN EVIDENCE OF LAND FORMERLY CUSTOMARY

Virdy Varlucy Watdin and Gunawan Djayaputra

evidence is anything containing signs or writing intended to convey a person's ideas and used as evidence.¹⁵ Written evidence is the main evidence in providing proof, considering the formal nature of the case and the legal act itself.¹⁶ Evidence in land disputes aims to demonstrate the validity of a party's claim to ownership of the land. In the context of proving land ownership, written evidence plays a crucial role in providing legal certainty for the owner or interested party. This is because the Indonesian legal system adheres to the principle of written evidence, where documents or land certificates often serve as the primary basis for determining the legality of ownership of a plot of land. Based on this, judges in land cases will consider various documents that can demonstrate the history of land ownership and control. Land disputes that frequently arise in communities are generally caused by weak evidence of land ownership originating from customary land. Some documents that serve as proof of ownership include:

1. Letter C

Letter C is a land administration document used in Indonesia before the land certification system was introduced through the Basic Agrarian Law of 1960. Letter C has been used since the Dutch colonial period until before the 1960s, where people at that time considered it as legal proof of ownership of the land they controlled.¹⁷ This document serves as proof of ownership of land managed by the village or sub-district office.

In the village administration system, Letter C records information about the land and its owners, including the land area, origin of ownership, and changes in ownership due to sale or inheritance.

2. Girik

Girik land is a term commonly used by the community to refer to customary land or land whose status has not yet been changed to a specific title, such as Ownership Rights, Building Use Rights, Use Rights, or Cultivation Rights. Furthermore, this land is not yet registered or officially certified by the Land Office.¹⁸

Girik land ownership generally undergoes a hereditary transfer or through transactions from one party to another. Initially, this land can be significant in size, but over time it is often divided into smaller sections. The process of transferring girik land rights is usually carried out in the presence of the Lurah (village head) or Village Head. However, in many cases, these transactions are based solely on trust between parties without any official documents, making it difficult to trace the ownership history. Girik is not legal proof of land ownership, but rather serves only as an initial indication. Therefore, its existence must be supported by other evidence, either in the form of written documents or witness testimony.¹⁹

3. Petok D

Petok D is a document that served as proof of land ownership during the Dutch colonial period, where land rights were recorded at the sub-district level, known as a village kretek. Prior to the enactment of the Basic Agrarian Law (UUPA), the community considered Petok D to be valid proof of ownership. However, after the UUPA was implemented, the legal status of land ownership was determined through a land title certificate as legally valid proof. However, in practice, many communities still use Petok D as proof of land ownership, even considering it part of local wisdom passed down from generation to generation.²⁰ This is caused by the community's limited ability to process land title certificates and the lack of socialization regarding the importance of legalizing land ownership through certification.

¹⁵Enju Juanda, (2016), "The Strength of Evidence in Civil Cases According to Indonesian Positive Law", Galuh Justisi Scientific Journal, Vol. 4, No. 1, p. 29.

¹⁶Asep Saepullah, (2018), "The Role of Evidence in Judicial Procedure", MK: Journal of Islamic Law Studies, Vol. 3, No. 1, p. 141.

¹⁷Annisa Oktaviani and Harjono, (2019), "The Evidential Strength of Letter C in Land Dispute Examination in Court (Case Study of Supreme Court Decision Case No: 816 K/Pdt/2016)", Verstek, Vol. 7, No. 1, p. 42.

¹⁸Ayni Suwarni Herry, (2024), "Legal Analysis of Girik Certificate According to Law Number 5 of 1960 Concerning Basic Agrarian Principles", Journal of Education and Teaching Review, Vol. 7, No. 1, p. 2419.

¹⁹Ibid.

²⁰Novira Yusrianti Hidayah, Suwarno Abadi, and Nuryanto A. Daim, (2024), "Legal Review of the Transfer of Rights to Petok D Land According to Agrarian Law in Indonesia", Wijaya Putra Journal of Legal Studies, Vol. 2, No. 1, pp. 2-3.

4. Ketitir.

Ketitir is a type of traditional document used as proof of land ownership before the enactment of the Basic Agrarian Law (UUPA) Number 5 of 1960. Documents such as ketitir record information regarding the history of the land, location, area, boundaries, and owner. Before the government enacted Law Number 5 of 1960 concerning Basic Agrarian Regulations, anyone holding documents such as a Letter C, Girik, Petok D, or Ketitir in their name was considered to have legal certainty over the land they controlled, unless proven otherwise. However, After the UUPA came into effect, proof of land ownership was officially recognized in the form of a certificate.²¹

The government has begun implementing a land certification system as stronger proof of ownership and legal certainty. According to the UUPA, a land title certificate is one of the written forms of evidence with the highest legal force in proving land ownership. As a written document, a land title certificate serves various functions for its owner. Its primary function is to serve as strong evidence in establishing land ownership. This aligns with the provisions of Article 19 of the UUPA. With a certificate, the land title holder can clearly prove their ownership, as the name listed on the document serves as legal proof of their land rights.²² Referring to the opinion of Yamin Lubis and Rahim Lubis, if a plot of land has a certificate legally issued in the name of an individual or legal entity who obtained it in good faith and actually controls it, then other parties claiming rights to the land can no longer file a claim. The claim is considered invalid if within a period of five years from the issuance of the certificate, no written objection is submitted to the certificate holder or the land office, and no lawsuit is filed with the court regarding the ownership or issuance of the certificate.²³

B. Legal Certainty and Justice in Agrarian Law

1. Legal Certainty in Agrarian Law

Legal certainty is a crucial element in any legal system, particularly codified law. According to Fence M. Wantu, laws that lack certainty will fail to fulfill their role as a guide for societal behavior.²⁴ Legal certainty is the assurance that a person's rights and obligations are clearly defined in applicable regulations. Thus, legal certainty defines the limits of permitted and prohibited actions under the law.²⁵ Legal certainty refers to the existence of clear and reliable guidelines, so that people can adjust their behavior in everyday life according to applicable norms and rules.²⁶ Legal certainty for every individual can be achieved through the clear application of the law in dealing with concrete events. In principle, applicable laws must remain consistent and must not deviate, as reflected in the principle of fiat justitia et pereat mundus (even if the world collapses, the law must remain upheld). Legal certainty also serves as protection for citizens from arbitrary actions, so that everyone is guaranteed to obtain their rights in accordance with the rules applicable in certain situations.²⁷

According to Jan M. Otto, law can create certainty if it develops in line with the cultural values that exist within society. Jan M. Otto emphasized the importance of a harmonious relationship between the state and the people, where both need to understand and adapt to the applicable legal system. Furthermore, legal certainty also depends on consistent law enforcement by authorized officials so that regulations can be applied fairly and create order in society.²⁸ Land plays a fundamental role in sustaining human life, with demand for it increasing over time while its availability remains limited. Land is essential for various aspects, including economic, social, and technological development. Furthermore, land serves

²¹Annisa Oktaviani and Hajono, Op., Cit., p. 42.

²²Abdul Muthallib, (2020), "The Influence of Land Title Certificates as Evidence in Achieving Legal Certainty", *Jurisprudence: Journal of Sharia, Legislation and Islamic Economics*, Vol. 12, No. 1, p. 36.

²³Klaudius Ilkam Hulu, (2021), "The Strength of Evidence of Land Ownership Certificates in Proof of Ownership Rights, *Jurnal Panah Keadilan*, Vol. 1, No. 1, p. 29.

²⁴ Siti Halilah and Mhd. Fakhurrahman Arif, (2021), "The Principle of Legal Certainty According to Experts", *Siyasah: Journal of Constitutional Law*, Vol. 4, no. 2, p. 60.

²⁵I Wayan Yasadan Echwan Iriyanto, (2023), "Legal Certainty of Judges' Decisions in the Settlement of Civil Disputes", *Jurnal Rechtsens*, Vol. 12, No. 1, p. 37.

²⁶Ibid., p. 36.

²⁷Hasaziduhu Moho, (2019), "Law Enforcement in Indonesia According to the Aspects of Legal Certainty, Justice and Benefit, *Warta Dharmawangsa*, Vol. 13, No. 1, p. 3.

²⁸Nurul Azizah, Asri Lasatu, and Asriyan, (2024), "Land Registration System in Indonesia from the Perspective of State Administrative Law", *JIH Aktualita*, Vol. 1, No. 2, p. 72.

as a habitat and an environment for human growth and development, while also serving as a resource that supports human survival.²⁹Based on this, land law is needed to achieve legal certainty. Land law is part of agrarian law, where this land law does not cover all aspects related to land, but rather focuses on the legal aspects, especially the rights to use and control land.³⁰These rights include ownership, use and transfer of land which are regulated in a legal system called land law. In agrarian law, legal certainty serves to protect land rights, reduce the potential for disputes, and create an orderly land administration system. In Indonesia, agrarian law is regulated by Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA). One of the main objectives of the UUPA is to guarantee legal certainty over land for all Indonesians, through land registration, certification, and the protection of customary rights and land ownership.

2. Justice in Agrarian Law

In addition to legal certainty, justice is also a crucial element that must be upheld in the Indonesian legal system. The word "justice" comes from the Arabic word "adl," which means acting in a balanced manner. This concept of balance encompasses the balance between rights and obligations, as well as harmonious relationships with other creatures.³¹ Referring to WJS Poerwadarminta's opinion, justice can be defined as an impartial and impartial attitude. Justice demands equal treatment without bias and avoids arbitrary action. Someone who acts arbitrarily can be said to be acting unfairly. Meanwhile, Frans Magnis Suseno, in his book "Political Ethics," explains that justice is a condition in which every individual in the same situation should receive equal treatment.³²

When prioritizing justice and legal certainty, legal justice must be prioritized. This is due to the importance of maintaining a balance between the rights of each individual without favoring any particular group. Once the principle of justice is met, legal certainty can be realized in accordance with the aspirations of the people in national and state life.³³ To achieve social justice for all Indonesians and maintain territorial integrity based on the principles of unity, shared interests, and collective benefit, a foundation based on humanitarian principles codified in legislation is required. By establishing the state as the authority with the authority to regulate land relations, a legal interaction model is designed that connects individuals, families, communities, and the state.³⁴

Justice in agrarian law is a fundamental principle aimed at creating balance in land ownership, control, and utilization to provide equitable benefits to all levels of society. This principle emphasizes the protection of community rights, particularly for vulnerable groups, to prevent inequality in land ownership. The Basic Agrarian Law (UUPA), as the primary legal basis, emphasizes that land must be utilized for the greatest prosperity of the people, while maintaining a balance between rights and obligations. Furthermore, justice in agrarian law encompasses transparent land dispute resolution that favors the common good. Through fair and non-discriminatory legal mechanisms, it is hoped that stability in the agrarian system will be achieved, allowing every individual and group to obtain land rights legally and equitably. In the context of Indonesian agrarian law, justice is not only related to formal legal aspects, but also encompasses various broader aspects, such as social, economic, and environmental dimensions.

C. Implications of the Policy of Eliminating Written Evidence of Formerly Customary Land for Legal Certainty and Agrarian Justice

Formerly customary land is land that was previously recognized under customary law and then converted into the national land law system in accordance with the UUPA. In practice, written evidence such as Letter C,

²⁹ Eni Suarti, (2019), "The Principle of Balance of Parties in Land Sale and Purchase Contracts", Doctrinal, Vol. 4, No. 1, p. 976.

³⁰Mudemar A. Rasyidi, (2021), "Land Law is a very important law, needed by the Indonesian people/nation in everyday life", Jurnal Mitra Manajemen, Vol. 12, No. 2, pp. 54-55.

³¹Aryati Arfah and Muhammad Arif, (2021), "Economic Development, Social Justice and Sustainable Economy in Islamic Perspective," SEIKO: Journal of Management & Business, Vol. 4, No. 1, pp. 566-581.

³²Januari and Nelti Lita, (2023), "The Essence of Justice in the Perspective of Legal Philosophy", Journal of Legal Research, Vol. 2, No. 2, p. 131.

³³Kania Dewi Andhika Putri and Ridwan Arifin, (2018), "A Theoretical Review of Justice and Certainty in Law in Indonesia", Mimbar Yustitia, Vol. 2, No. 2, p. 150.

³⁴Damianus Krismantoro, (2022), "History and Development of Agrarian Law in Indonesia in Providing Justice for the Community", International Journal of Demos, Vol. 4, No. 2, p. 887.

LEGAL CERTAINTY AND AGRARIAN JUSTICE REGARDING THE POLICY OF ERASING WRITTEN EVIDENCE OF LAND FORMERLY CUSTOMARY

Virdy Varlucy Watdin and Gunawan Djayaputra

Girik, Petok D, or Ketitir are often used as the basis for land ownership claims before the issuance of land title certificates by the National Land Agency (BPN). Land that has not been registered with the BPN, such as Girik and Letter C, Petok D, and Ketitir, continues to be used as initial proof of ownership in land disputes, both in general courts and in state administrative courts. However, on the other hand, there are policies that actually eliminate written evidence of former customary land, which is widely used by indigenous communities as the basis for their land ownership claims.

The policy of eliminating written evidence of former customary land ownership, such as Letter C, Girik, Petok D, and Ketitir, as stipulated in Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration, has a significant impact on legal certainty and agrarian justice in Indonesia. Referring to Article 96 paragraphs (1) and (2) of the Regulation, documents that serve as proof of ownership of former customary land must be registered within five years. If this time limit is exceeded, the document no longer has legal force as proof of ownership. However, the document can still be used as a reference in the land registration process. Government Regulation No. 18 of 2021 came into effect on February 2, 2021, meaning that after five years, in 2026, written evidence of former customary land will no longer be valid as evidence in court. These documents serve only as guidelines in the land registration process to obtain certificates. This policy undoubtedly impacts legal certainty and justice for owners of former customary land, especially those who failed to register their land within the specified time limit.

1. Implications for Legal Certainty

In land law, legal certainty is crucial to ensure that land ownership rights are recognized, protected, and legally demonstrable. Before the new policy was implemented, written evidence of former customary land ownership served as the initial legal basis for indigenous communities who have managed the land for generations. However, the elimination of these documents has created various issues that could potentially threaten legal certainty for landowners, including:

a. Uncertainty of Land Ownership Status

The elimination of written evidence for former customary land as a basis for proving ownership has significantly impacted land ownership uncertainty, particularly for communities who have not registered their land in the National Land Agency's certification system. Without these documents, communities who have relied on Letter C, Girik, Petok D, or Ketitir as proof of ownership face difficulties in legally proving their rights. This creates legal uncertainty that can trigger problems.

b. Difficulties in Proving Land Rights

In the event of a land dispute, indigenous communities without land certificates, either due to limited information or ignorance, will face significant difficulties in proving their ownership rights. This is because the documents they possess, such as Girik, Petok D, or Ketitir, are no longer recognized as legal evidence following the implementation of the policy of eliminating written evidence of former customary land ownership. This limitation makes communities increasingly vulnerable to land conflicts, experiencing obstacles in administrative processes, and risking the loss of land they have controlled for generations.

c. Potential for Increased Agrarian Conflict

The unclear status of former customary land can increase the potential for disputes between indigenous communities, individuals, or other parties with interests in land ownership. Indigenous communities that do not yet have official land titles from the National Land Agency (BPN) are the most vulnerable to the impacts of this policy.

2. Implications for Agrarian Justice

a. Impacts on Indigenous Communities and Smallholder Farmers

Agriculture plays a vital role in supporting economic growth in developing countries and improving public welfare. Many regions with developing economies rely on agriculture as the primary source of livelihood for a large portion of the population, particularly those living in rural areas.³⁵Therefore, the rights of farmers and communities to land must continue to be protected to ensure the sustainability of agricultural businesses and prevent inequality in land ownership.

³⁵ Diana Syahputri, Sofia Lubis, and Bunga Anggraini, (2024), "Analysis of the Role of the Agricultural Sector in Reducing Poverty and Increasing Welfare in Developing Countries," *Journal of Economics, Business and Management*, Vol. 3, No. 1, p. 94.

LEGAL CERTAINTY AND AGRARIAN JUSTICE REGARDING THE POLICY OF ERASING WRITTEN EVIDENCE OF LAND FORMERLY CUSTOMARY

Virdy Varlucy Watdin and Gunawan Djayaputra

Indigenous communities and smallholder farmers, who generally have not yet obtained land certification, will be the most impacted. They will lose access to the initial evidence that could have been used to claim land rights.

b. Potential for Land Control by Interested Parties

When written evidence of former customary land is no longer legally recognized as proof, indigenous communities who have long managed their land face a significant risk of losing their ownership rights. Land not yet registered in the formal land system becomes vulnerable to claims from other parties with greater access to land administration and land certification. This inequality further exacerbates the distribution of land ownership, as more influential parties can obtain legal recognition for land previously controlled by indigenous communities.

c. Non-Compliance with the Principles of Agrarian Reform

Agrarian reform basically aims to reorganize the land ownership and management system in society, so that a fairer and more equitable distribution is created, enabling every individual to obtain equal rights in the land sector.³⁶

With agrarian reform, it is hoped that inequality in land ownership can be reduced and access to agrarian resources more inclusive, especially for indigenous communities and smallholder farmers who depend on land as their primary source of livelihood. This policy should provide legal protection for those who have long managed land for generations, while ensuring that every citizen has an equal opportunity to acquire land rights. However, the policy of eliminating written evidence of former customary land ownership without a clear transition mechanism has the potential to conflict with the principles of agrarian reform.

Without concrete solutions, such as accelerated land registration programs or administrative assistance for indigenous communities and smallholder farmers, this policy could exacerbate agrarian inequality. Furthermore, communities who struggle to obtain land certification due to limited access to information, costs, or complicated administrative procedures will be further marginalized. They risk losing their land rights due to claims from other parties with greater resources to manage legal ownership. Therefore, without policies that support the equitable transfer of ownership evidence, the elimination of written evidence of former customary land ownership could exacerbate land inequality and contradict the very spirit of agrarian reform.

D. Solutions in Implementing the Policy on the Elimination of Written Evidence of Former Customary Land

To prevent the policy of eliminating written evidence of former customary land ownership from creating legal uncertainty and agrarian conflict, a comprehensive and equitable solution is needed for the community, especially those without land certificates. Several steps that can be taken include:

1. Massive and Free Land Registration

To prevent the loss of land rights, a more proactive and inclusive land certification program is needed. The government can design a free or affordable land registration program, especially for indigenous communities and smallholder farmers, so they have official certificates as proof of legal and legally recognized ownership. With massive and free land registration, it is hoped that it will not only create legal certainty for landowners but also support social and economic stability for communities, especially vulnerable groups such as indigenous peoples and small farmers. This aligns with the goals of agrarian reform, which aims to create equity in land distribution and ownership in Indonesia.

2. Improving Legal Socialization and Education

Most indigenous communities and smallholder farmers still don't understand the urgency of land registration with the National Land Agency (BPN) as a step to obtain legal certainty over their land ownership. This lack of understanding can leave them vulnerable to agrarian disputes and the loss of rights to land they have traditionally managed. Therefore, more intensive and systematic outreach efforts are needed from the government and relevant parties, through direct counseling, legal assistance, and information campaigns. This outreach should cover detailed land legalization procedures, the benefits of certificate ownership, and the risks arising from the removal of written evidence of former customary land ownership, so that communities can better understand the importance of formal land registration.

³⁶Retno Sulistyarningsih, (2021), "Agrarian Reform in Indonesia", *Perspektif*, Vol. 26, No. 1, p. 63.

3. Strengthening the Role of Regional Governments and Traditional Institutions

Local governments and customary institutions play a crucial role in supporting communities in the land certification process. Strong collaboration between the central government, local governments, and customary institutions can expedite the resolution of land rights disputes more efficiently and ensure that implemented policies support the interests of affected communities. This synergy can also help minimize the potential for agrarian conflicts and ensure that the land legalization process is transparent and fair to all parties. As part of this effort, local governments should be given greater authority to manage and oversee the land registration process in their jurisdictions. They can establish special task forces that collaborate with customary institutions to identify, document, and verify unregistered indigenous land. The involvement of customary institutions is crucial because they have a track record of land ownership, which can serve as a basis for the legalization process and prevent unauthorized claims from third parties.

With the implementation of appropriate measures, the policy of eliminating written evidence of former customary land can be implemented without violating the rights of communities who have relied on these documents as proof of land ownership. This approach must ensure that all communities, especially vulnerable groups such as indigenous peoples and smallholder farmers, continue to receive adequate legal protection. Furthermore, the implementation of this policy needs to be gradual, with a clear transition mechanism, to avoid creating legal uncertainty or exacerbating agrarian conflicts. Thus, the elimination of written evidence of former customary land ownership can remain in line with the principles of agrarian justice, legal certainty, and the protection of land rights for all citizens.

IV. CONCLUSION

The policy of eliminating written evidence of former customary land ownership has had a significant impact on legal certainty and agrarian justice in Indonesia. While intended to accelerate land certification and create legal certainty, this policy has created various problems for communities, especially those who still rely on traditional documents such as Girik, Petok D, Letter C, and Ketitir as proof of ownership. From a legal certainty perspective, the elimination of written evidence without a clear transition mechanism has the potential to increase uncertainty about land ownership status and make it difficult for communities to prove their land rights. Furthermore, this policy could also exacerbate agrarian inequality, particularly for groups with economic and social limitations in obtaining land certificates. To address these issues, more inclusive solutions are needed, such as accelerating the free land registration program, increasing public awareness of the importance of land certification, and strengthening the role of local governments and customary institutions in assisting with the land ownership legalization process. With a fairer and more comprehensive approach, this policy can be implemented without neglecting community rights and remaining aligned with the principles of agrarian justice and legal certainty.

REFERENCES

- Arfah Aryati dan Muhammad Arif, (2021), "Pembangunan Ekonomi, Keadilan Sosial Dan Ekonomi Berkelanjutan Dalam Perspektif Islam," *SEIKO: Journal of Management & Business*, Vol. 4, No. 1.
- Atikah Noor, (2022), "Kedudukan Surat Keterangan Tanah Sebagai Bukti Kepemilikan Hak Atas Tanah Dalam Sistem Hukum Pertanahan Indonesia", *Notary Law Journal*, Vol. 1, No. 2.
- Ayu Isdiyana Kusuma, (2019), "Kepastian Hukum Pendaftaran Tanah Melalui Pendaftaran Tanah Sistematis Lengkap di Kota Batu", *Mimbar Hukum: Fakultas Hukum Universitas Gadjah Mada*, Vol. 31, No. 3.
- Azizah Nurul, Asri Lasatu, dan Asriyan, (2024), "Sistem Pendaftaran Tanah di Indonesia Dalam Perspektif Hukum Administrasi Negara", *JIH Aktualita*, Vol. 1, No. 2.
- Benuf Kornelius & Muhammad Azhar, (2020), "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer", *Jurnal Gema Keadilan*, Vol. 7, No. 1.
- Diantha I Made Pasek, *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*, (Jakarta: Prenada Media, 2016).
- Grey Andrew dan Widodo Suryandono, (2020), "Proses Pembatalan Sertipikat Hak Milik Atas Tanah Karena Akta Jual Beli Yang Cacat Hukum (Studi Kasus Putusan Nomor 72/G/2018/PTUN.BDG)", *Indonesian Notary*: Vol. 2, No. 2.
- Halilah Siti dan Mhd. Fakhurrahman Arif, (2021), "Asas Kepastian Hukum Menurut Para Ahli", *Siyasah: Jurnal Hukum Tata Negara*, Vol. 4, No. 2.

LEGAL CERTAINTY AND AGRARIAN JUSTICE REGARDING THE POLICY OF ERASING WRITTEN EVIDENCE OF LAND FORMERLY CUSTOMARY

Virdy Varlucy Watdin and Gunawan Djayaputra

- Herry Ayni Suwarni, (2024), "Analisis Yuridis Surat Keterangan Girik Menurut Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria", *Jurnal Review Pendidikan dan Pengajaran*, Vol. 7, No 1.
- Hidayah Novira Yusrianti, Suwarno Abadi, dan Nuryanto A. Daim, (2024), "Tinjauan Yuridis Peralihan Hak Atas Tanah Petok D Menurut Hukum Agraria di Indonesia", *Jurnal Ilmu Hukum Wijaya Putra*, Vol. 2, No. 1.
- Hulu Klaudius Ilkam, (2021), "Kekuatan Alat Bukti Sertifikat Hak Milik Atas Tanah Dalam Bukti Kepemilikan Hak, Jurnal Panah Keadilan, Vol. 1, No. 1.
- Indonesia, Peraturan Pemerintah Nomor 18 Tahun 2021 tentang Hak Pengelolaan, Hak Atas Tanah, Satuan Rumah Susun, dan Pendaftaran Tanah..
- Iriyanto I Wayan Yasadan Echwan, (2023), "Kepastian Hukum Putusan Hakim Dalam Penyelesaian Sengketa Perkara Perdata", *Jurnal Rechtsens*, Vol. 12, No. 1.
- Januari dan Nelti Lita, (2023), "Hakekat Keadilan Dalam Perspektif Filsafat Hukum", *Jurnal Penelitian Hukum*, Vol. 2, No. 2.
- Juanda Enju, (2016), "Kekuatan Alat Bukti Dalam Perkara Perdata Menurut Hukum Positif Indonesia", *Jurnal Ilmiah Galuh Justisi*, Vol. 4, No. 1.
- Krismantoro Damianus, (2022), "Sejarah dan Perkembangan Hukum Agraria di Indonesia Dalam Memberikan Keadilan Bagi Masyarakat", *International Journal of Demos*, Vol. 4, No. 2.
- Lubis Fauziah dan Fahrul Raji Khassa, (2024), "Prosedur Pembuktian Dalam Hukum Acara Perdata", *Jurnal Hukum dan Kebijakan Publik*, Vol. 6, No. 3.
- Moho Hasaziduhu, (2019), "Penegakan Hukum di Indonesia Menurut Aspek Kepastian Hukum, Keadilan dan Kemanfaatan, *Warta Dharmawangsa*, Vol. 13, No.1.
- Mulyadi dan Satino, (2019), "Penyelesaian Sengketa Kepemilikan Tanah Bersertifikat Ganda", *Jurnal Yuridis*, Vol. 6, No. 1.
- Murni Christiana Sri dan Sumirahayu Sulaiman, (2022), "Sertifikat Hak Milik Atas Tanah Merupakan Tanda Bukti Hak Kepemilikan Tanah", *Lex Librum: Jurnal Ilmu Hukum*, Vol. 8, No. 2.
- Muthallib Abdul, (2020), "Pengaruh Sertifikat Hak Atas Tanah Sebagai Alat Bukti Dalam Mencapai Kepastian Hukum", *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-undangan dan Ekonomi Islam*, Vol. 12, No. 1.
- Oktaviani Annisa Oktaviani dan Harjono, (2019), "Kekuatan Pembuktian Surat Letter C Dalam Pemeriksaan Sengketa Tanah di Persidangan (Studi Kasus Putusan Mahkamah Agung Perkara No: 816 K/Pdt/2016), *Verstek*, Vol. 7, No. 1.
- Putri Kania Dewi Andhika dan Ridwan Arifin, (2018), "Tinjauan Teoritis Keadilan Dan Kepastian Dalam Hukum Di Indonesia", *Mimbar Yustitia*, Vol. 2, No. 2.
- Rasyidi Mudemar A., (2021), "Hukum Tanah Adalah Hukum Yang Sangat Penting, Dibutuhkan Oleh Masyarakat/Bangsa Indonesia Di Dalam Kehidupan Sehari-Hari", *Jurnal Mitra Manajemen*, Vol. 12, No. 2.
- Rohmatika Fina, Malik Fahad, dan Sumriyah, (2023), "Kekuatan Hukum Letter C sebagai Alat Bukti Hak Kepemilikan Atas Tanah", *Khirani: Jurnal Pendidikan Anak Usia Dini*, Vol. 1, No. 2.
- Saepullah Asep, (2018), "Peranan Alat Bukti Dalam Hukum Acara Peradilan", *Mahkamah: Jurnal Kajian Hukum Islam*, Vol. 3, No. 1.
- Saputri Dea Mahara dan Abdul Azis, (2023), "Kedudukan Alat Bukti Dalam Hukum Acara Perdata Sebagai Implementasi Kepastian Hukum, *Rechtsregel: Jurnal Ilmu Hukum*, Vol. 6, No. 2.
- Sari Indah, (2020), "Hak-Hak Atas Tanah Dalam Hukum Pertanahan di Indonesia Menurut Undang-Undang Pokok Agraria (UUPA)", *Jurnal Mitra Manajemen*, Vo. 9, No. 1.
- Suarti Ani, (2019), "Asas Keseimbangan Para Pihak Dalam Kontrak Jual Beli Tanah", *Doctrinal*, Vol. 4, No. 1.
- Sulistyaningsih Retno, (2021), "Reforma Agraria Di Indonesia", *Perspektif*, Vol. 26, No. 1.
- Syahputri Diana, Sofia Lubis, dan Bunga Anggraini, (2024), "Analisis Peran Sektor Pertanian Dalam Pengurangan Kemiskinan dan Peningkatan Kesejahteraan di Negara-Negara Berkembang, *Jurnal Ekonomi, Bisnis dan Manajemen*, Vol. 3, No. 1.
- Zainuddin Muhammad dan Aisyah Dinda Karina, (2023), "Penggunaan Metode Yuridis Normatif Dalam Membuktikan Kebenaran Pada Penelitian Hukum", *Smart Law Journal*, Vol. 2, No. 2.