



## Legal Effects of Sporadik Issuance of Certified Land

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### **Abstract**

A certificate is a valid proof of ownership of land, but in this case the certificate does not apply if another person also controls the land. The purpose of this study was to analyze the strength of Sporadik law as the evidence of land tenure based on Law Number 5 of 1960 and analyze legal effects of Sporadik issuance of certified land. This study refers to the type of empirical normative research. It utilizes several approaches, including: 1) statute approach, 2) conceptual approach, and 3) sociological approach. The results of this study indicate that the strength of Sporadik issued must be in accordance with the procedures specified in the Government Regulation No. 24 of 1997 so that it has legal strength as the basis for the right to control over land. If the Sporadik issued is not in accordance with the requirements and provisions in the Government Regulation No. 24 of 1997, it cannot be used as the basis for the right to control over the land which can result in the absence of legal certainty and the appearance of disputes.

**Keywords:** land certificate; law; *Sporadik*

### **Introduction**

Nowadays, most of the properties including movable and immovable properties require a proof or letter to prove an ownership right. It is confirmed by the theory of legal certainty and the theory of justice. In this digital era, a proof strongly influences people's confidence in the ownership of properties. Although most transactions use electronic transactions, the ownership rights can be proven by proof of transfer and proof of delivery.

Moreover, in the land reform system, it is crucial to have a proof of ownership right in the ownership of a piece of land to avoid claims by other parties. A land right can be defined as the right that gives authority to someone who has the right to use or take advantage of particular land (Sumardjono, 2008). It is different from land use rights.<sup>1</sup> One of the characteristics of the land right is that someone who has the right has an authority to use or take advantage of the land. It is stipulated in Article 16 jo Article 53 of Agrarian Basic Law.

The case in this study is that there is a plot of land located in Labuan Petong, Gili Genting, West Sekotong, Sekotong, West Lombok. H. Saeful Arifin makes a *Sporadik* to the land he claims as his property based on inherited land obtained from his grandfather who had previously been obtained *munik*

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<sup>1</sup> Sri Sayekti, 2000:20

or by clearing land. However, in fact, that land is certified in the name of PT Alang Gigi issued by Office of the Land Agency of West Lombok in 2006. The legal consequence of the issuance of *Sporadik* has an implication for the landowner who has a certificate.

A certificate is a legitimate proof of land ownership, but in this case, the certificate is not applicable if another person controls the land on the basis of his authority. *Sporadik* eventually becomes one of the first owners' ways to sue a third party in a court to get their rights back based on the certificate. Besides not having power over his land, the first owner has no legal certainty and justice because of the *Sporadik* issuance on the land that already has a certificate.

### ***Theoretical and Conceptual Framework***

Theoretical framework is a foundation of thinking that comes from a theory that is often needed to solve various problems in a study. It also functions as a frame of reference that can direct a study. In each study, it has to be accompanied by theoretical thoughts because there is a close reciprocal relationship between the theory and the activities of collecting, processing, analyzing and constructing legal materials (Goertz, 2008). It is needed as an analysis 'knife' in answering the formulation of the research problems stated above. The concepts and theories used are function theory, legal certainty theory, legal protection theory, legitimacy theory, and validity theory.

### ***Land Registration***

According to the Government Regulation No. 24 of 1997 Article 1 paragraph 1, land registration is a series of activities carried out by the government continuously and regularly Irfan & Kurniati, (2018). It includes collecting, processing, bookkeeping presenting and maintenance of physical data and juridical data in the form of maps and lists regarding plots of land and units of flats (Tehupeiory, 2012). It also includes giving a proof of ownership rights to a plot of land that already has rights, ownership rights to the apartment unit and other particular rights. It is confirmed in Article 19 paragraph (1) of Agrarian Basic Law which stipulates that to guarantee the legal certainty of land rights, there is land registration in the entire territory of the Republic of Indonesia based on provisions regulated by government regulations. It refers to the Government Regulation No. 24 of 1997. The definition of land registration is confirmed in Article 19 paragraph (2) Agrarian Basic Law which covers:

1. Land Measurement, Mapping and Bookkeeping;
2. Registration of land rights and the transfer of these rights;
3. Provision of proof of rights that applies as a strong evidence.

Land registration provides information about the status of the land and who has the right over the land (*Open Baarhelt Principle*). Giving proof of rights is a strong evidence (certificate). The definition of land registration above includes:

1. The implementation of land registration includes land registration activities for the first time (initial registration);
2. Maintenance of land registration data. The land registration is a series of activities carried out by the government continuously and regularly. It includes collecting, processing, bookkeeping presenting and maintenance of physical data and juridical data in the form of maps and lists regarding plots of land and units of flats. It also includes giving a proof of ownership rights to a

plot of land that already has rights, ownership rights to the apartment unit and other particular rights.

The initial registration is an activity of land registration conducted on the object of land registration that has not been registered, according to the provisions of Government Regulation Number 24 of 1997 which is carried out through systematic and sporadic land registration. The initial registration of the land according to Article 12 of Government Regulation No. 24 of 1997, includes:

1. Collecting and processing of physical data;
2. Collecting and processing of juridical data;
3. Issuing certificates;
4. Presenting physical and juridical data;
5. Storing general lists and documents.<sup>2</sup>

### *Definition of Certificate*

According to Government Regulation No. 24 of 1997 concerning land registration, land book is a document in the form of a list containing juridical data and physical data on an object for registration of land that has rights (Taluke, 2013). While the certificate is a letter of proof of rights as referred to in Article 19 paragraph (2) letter c of the Agrarian Basic Law for land rights, waqf land, management rights, ownership rights to apartment units and mortgage rights, each of which has been recorded in the land book involved.

Based on their needs, land rights, management rights, waqf land and ownership rights to apartment units are listed by posting them in a land book that lists juridical data and the physical data of the land concerned, and as long as there is a measurement letter, they are also recorded in the measurement letter. Bookkeeping in the land book along with the data on the measurement letter as referred to in Article 29 paragraph 1 is proof of the rights concerned and the rights holders and the land described in the letter of measurement are legally registered.

In addition, certificates are issued for the benefit of the relevant rights holders in accordance with the physical data and juridical data that have been registered in the land book as referred to in Article 30 paragraph (1). The certificate is only given to the party whose name is stated in the land book. In conclusion, the difference is that the land book is a document that contains juridical data and physical data on land that has the right, while the land certificate is a letter of proof of land rights recorded in the land book.<sup>3</sup>

### 1.1 Legal Basis of Law Number 5 of 1960 of Agrarian Basic Law

The Agrarian Basic Law (officially called Law Number 5 of 1960 concerning Basic Agrarian Principles) is a law that regulates the principles and provisions for the control, ownership, use and utilization of national agrarian resources in Indonesia (Soimin, 1994). It includes basic principles and provisions, rights to land, water and space as well as land registration, criminal provisions and transitional provisions.<sup>4</sup>

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<sup>2</sup> <http://digilib.unila.ac.id/20180/3/bab%20II.pdf>

<sup>3</sup> <https://inapex.co.id/pengertian-sertifikat-tanah-yang-harus-diketahui>

<sup>4</sup> [https://id.wikipedia.org/wiki/Undang-Undang\\_Pokok\\_Agraria](https://id.wikipedia.org/wiki/Undang-Undang_Pokok_Agraria)

## 1.2 Legal Effects of *Sporadik*

From a legal standpoint, the rights possessed by a land certificate/ *Sporadik* are Preferential Rights (privileges) in which to prove the existence of the Preferred Rights, the written evidence is needed. It is a unilateral statement from the ruler of the land that is recognized and approved by *sempadan* and is known by RT, village, and sub-village. Therefore, *Sporadik* can defeat a certificate because the basis of the certificate is a basic letter. The legal consequences have implications for landowners who already have certificates.

### **Research Methods**

This research refers to the type of empirical normative research that is a research aimed at identifying and describing legal aspects related to the Legal Effects of *Sporadik* Issuance of Certified Land (Case Study in West Sekotong). Furthermore, this study also attempts to explain the practice of *Sporadik* application. This study utilizes several approaches, including: 1) Statute approach. It is to study and review the rules of positive law originating from legislation and the provisions related to research problems and other regulations which are relevant to the research problems, 2) Conceptual approach. It is an approach taken to understand the concepts or opinions of legal experts who are expected to provide a more comprehensive idea and information about *Sporadik*, 3) Sociological Approach: comparative and holistic.

The types and sources of legal materials used in this study are:

- a. Primary Law Material. It is material that is obtained through the assessment of library materials that contain new or up-to-date knowledge or new understanding of known facts and about an idea specifically related to *Sporadik*. This primary legal material includes 1) Law Number 5 of 1960 concerning the Agrarian Basic Law, 1) Government Regulation No. 24 of 1997 concerning land registration, research results, magazines, dissertations, working papers on conferences, workshops, seminars and symposiums.<sup>5</sup>
- b. Secondary legal material. It is library material that contains information about primary material, consisting of: explanation of the law, interview respondents, interview informants, about land law<sup>6</sup>, panel discussion and others.
- c. Tertiary legal materials, which include materials that support primary and secondary legal entities such as legal dictionaries, language dictionaries, articles in newspapers / newspapers and magazines and journals.

The collection of legal materials in this study was obtained through library research. For this reason, the researcher conducted a search of the literature located in Mataram City:

- a) Library of Law Faculty, Mataram University in Mataram
- b) Library of Mataram University in Mataram
- c) Library of West Nusa Tenggara Regional Government

<sup>5</sup> Ashshofa Burhan, *Op. Cit.*, page. 103-104.

<sup>6</sup> Bambang Waluyo, 1991, *Legal Research in Practice*, Sinar Grafika, Jakarta, page 6.

Besides data collection techniques through library research, data collection is also done through field studies, in order to obtain primary data as supporting data. Primary data collection is done through interviews with the informants or interviewees who are considered to know and understand the problems being studied.

### *Legal Material Analysis*

Analysis of legal material is carried out qualitatively. It means that the library legal materials and the results of the interviews are analyzed in depth, holistically and comprehensively. The use of qualitative analysis methods is based on two considerations. The first one is that the data analyzed is obtained from various sources, and the second one is that the nature of legal materials analyzed is comprehensive and requires in-depth information.

## **Results and Discussion**

### *Land Registration*

Based on Article 19 paragraph (2) of the Agrarian Basic Law, there are duties for land registration which are administrative duties and technical duties. Administrative duties include land bookkeeping, registration of land rights, transitional registration and giving proof of rights, while the technical duties consist of measurement and mapping.

According to the provisions in Article 2 of Government Regulation Number 24 of 1997, everything related to administrative matters is referred to juridical data, while the technical aspects are referred to physical data. Juridical data means that there is information about the legal status of the land that is registered, the rights and rights of other parties as well as other burdens that burden them. If it is stated as the legal status of the registered land, it means that there is evidence that indicates a legal relationship between people and their land. The evidence of legal relations is then formalized (not legalized) through land registration activities.

On the previous paragraph, it is mentioned 'It is because land registration activities carried out by the National Land Agency are not yet in the position of guaranteeing material truth from the ownership of one's land, but only provide justification or confirmation from the formal evidence submitted by the party submitting the application for the right to the written evidence issued by the authorized official. It is submitted by the applicant as the evidence of the existence of control or rights or legal relations between someone concerned with the land.

### *Land Rights*

A land right can be defined as the right that gives authority to someone who has the right to use or take advantage of the land. It is different from land use rights.<sup>7</sup> One of the characteristics of the land right is that someone who has the right has an authority to use or take advantage of the land. It is stipulated in Article 16 jo Article 53 of Agrarian Basic Law, including:

1. Right of Ownership;
2. Cultivation Rights;
3. Building Rights;

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<sup>7</sup> Sri Sayekti, 2000:20

4. Right of Use;
5. Right of Lease;
6. Land Clearing Rights;
7. Forestry Rights;
8. Other rights which are not included in the rights mentioned above that are stipulated by law and temporary rights as stated in Article 53.

### *The Legal Force of Sporadik as a Proof of Land Tenure*

Based on the appropriate requirements and procedures in the application for making *Sporadik*, the *Sporadik* can be used legally as a proof of land tenure by community that owns the land which is equipped with the Tax Object Number in the Notification of Tax Due. However, if the *Sporadik* application process does not obey the procedures and requirements, it is legally invalid which causes it not to have legal force as a means of proof of land tenure based on the Government Regulation Number 24 of 1997 concerning Land Registration which states, "For the first rights application to the National Land Agency, it is necessary to attach the Notification of Tax Due, *Sporadik*". After that, if the application is received or proceed:

1. The National Land Agency, in this case the surveyor or the measurement team, measures land together with the head of the village at the location of the land;
2. Publishes a map of land;
3. Makes announcements for two consecutive weeks;
4. If there is no objection, the applicant will pay Duty on Land and Building Right Acquisition;
5. Makes the book of rights;
6. The certificate is issued and signed by the Head of the local National Land Agency Office;
7. If the land is from the process of sale and purchase, its letter must be attached.

If *Sporadik* is issued in accordance with the appropriate procedures and requirements, the land registration application will be accepted, and vice versa.

### *Procedure for Application of Sporadik Issuance based on the Results of the Interview and the Information from the Respondents on 28-29 May 2019.*

Based on the results of interviews with several parties involved in making the *Sporadik*:

#### **1) The Party Involved**

1. SAPARUDIN (HEAD OF THE VILLAGE GOVERNMENT) affirms; that the initial process of making *Sporadik* by the applicant begins by submitting an application to the local village head attaching the applicant's identity in the form of Identity Cards and Notification of Tax Due which will be made a *Sporadik*. After that, the applicant and the village head come to the village office to submit an application for making *Sporadik*. Then, the head of the village government section verifies:
  1. Checking the identity of the applicant;
  2. Check the Notification of Tax Due of the applicant's land;

If the land requested for *Sporadik* is from the first applicant and obtained by sale and purchase process, then the applicant's sale and purchase letter must be attached. The next step is that the head of the government section will contact the district land agency's surveyor / the measurement team. When the day is determined, they and the applicant review and examine the land by involving:

1. Chairperson of RT, where the land is located;
2. The head of the village;
3. The surveyor (the measurement team);
4. Village staff;
5. The applicant;
6. The landowners;

After that, the village government takes measurements with the surveyor/ the measurement team and witnessed by RT, the head of the village, and landowners.

When all the processes have been carried out, the village government issues the *Sporadik* requested. It contains the data:

1. Applicant's Identity;
2. Land physical data (land area, land location, land boundaries);
3. The village head ascertains whether the object of the land in the process of making *Sporadik* does not have a land certificate,
  - a. Not a debt guarantee;
  - b. Not in dispute;
  - c. It is not inherited land that has not been shared;
  - d. Not certified;
  - e. Its mastery has never been contested.
4. The origin of the land;
5. Signed by the person who made the statement;
6. Signed by two witnesses (the head of the village, the chairperson of RT and *pekaseh*);
7. The signature is known on behalf of the local village chief.

After *Sporadik* is published, it has a time limit of 3 (three) years from its publication.

2. H. FATHURRAHMAN (former head of Gili Genting Village in 1990-2012), states that  
The community or someone who wants to make a *Sporadik* usually comes to my house, the head of the village, then I ask them to provide:
  1. Identity of the applicant/ citizen;
  2. Notification of Tax Due of the Applicants or citizen;
  3. If the land is from the process of sale and purchase, its letter must be attached.

Then, the applicant and I go to the village office to request the application form for making *Sporadik*. The village government will notify the schedule for measurement with the village surveyor or the measurement team. After getting the schedule, I will notify the land owner and the chairperson of RT

where the land is located. Therefore, if there is a *Sporadik* published on the certificate, then obviously it is illegal and I might not know that the *Sporadik* has been made or suddenly appeared.

## 2) Respondents

1. Respondent 1- H. SAEFUL ARIFIN; because I feel that I have inherited land from my grandfather named Papuk Riwe. He told me that in 1972 he cut down the forest becoming the land by cutting down trees into farm in Batu Selek, Labuan Petung Gili Genting, West Sekotong, Sekotong, West Lombok, so I went to the head of Gili Genting Village to make a *Sporadik*. He told me to provide the identity card and Notification of Tax Due of the land. I gave what he asked. A week later, I was invited to the village office and told to pay for administration to take measurements and the officers' transportation fee. A month later, I was asked to show the location of the land. After reviewing the land, *Sporadik* was issued a month later. That is the process that I experienced and I know. It is true that the land belongs to my grandfather.

Based on the information of the parties involved and the respondents, according to the author, there are three requirements that become the basis of the applicant's application in making a *Sporadik*:

1. Applicant's identity;
2. Applicant's land data;
3. The origin of the applicant's land.

With the aim as proof of the beginning of the land that has been acquired by the applicant obtained both from inheritance and purchase, The author believes that if someone has a *Sporadik* and Notification of Tax Due, the land should not be disputed with third parties or other parties "if the application for *Sporadik* is carried out according to the procedure".

In fact, the author found a *Sporadic* issued on land that has been certified which is certificate number 790 in the name of Ahmad Akeang and Building Rights Certificate Number 30 on behalf of PT ALANG GIGI. This very clearly shows the overlap between ownership owned by H. Saeful Arifin and the Ownership Letter owned by H. Ahmad Akeang and PT ALANG GIGI which causes the land disputes in the community.

Parties who have valid proof of ownership must cancel the existing *Sporadik* or certificate. The author in his research found the fact that the one who made the lawsuit was PT ALANG GIGI and H. AHMAD AKEANG became the defendant by H. Saeful Arifin because H. Saeful Arifin believes that he is the most entitled to own the land since the land was obtained from the inheritance left by his grandfather, the late Papuk Riwe. Although at the time of the research the author did not know who was more entitled in the land, the court's decision stated that the land was vacated or the land seemed to have no landowner.

### *Legal Effects of Sporadik Issuance of Certified Land*

If the new *Sporadik* is issued on land that already has a certificate, both the first land owner and the landowner who has the *Sporadik* do not have legal certainty and have no sense of security towards the land. Currently, it may be possible for the *Sporadik* owner to utilize the land, but one day it will be expelled by the land owner who has the certificate, so that disputes will arise and will never end. In other words, people who have certificates and those who have *Sporadik* have no legal certainty to control the land.

In terms of justice, the landowners who have the *Sporadik* based on the inheritance cannot fully utilize the land because at any time they have to move from the land. In addition, the landowners who



have land certificates obtained from the sale and purchase who have paid the money determined by the Regional Revenue Service based on the Tax Object Selling Value will feel disadvantaged because they have paid but cannot enjoy the land due to the interference from a third party or other party.

### **Conclusions**

Based on the results of the research, here are the conclusions:

1. The strength of the *Sporadik* issued must be in accordance with the procedures determined by the Government Regulation No. 24 of 1997, so it has a legal force as the basis for the right to control over the land.
2. If the *Sporadik* issued is not in accordance with the requirements and provisions in the Government Regulation No. 24 of 1997, it cannot be used as the basis for the right to control over the land which can result in the absence of legal certainty and the appearance of disputes.

### **Suggestions**

1. In the form of *Sporadik*, verification of the request for *Sporadik* issuance must be initiated from the time the application is submitted to the head of the village, village office and the measurement team from the National Land Agency which is reinforced by the owner.
2. The *Sporadik* issuance applicant must make a statement:
  - Not used as collateral for debt;
  - Not in dispute;
  - It is not inherited land that has not been shared;
  - Not certified;
  - Mastery is never contested;
  - The origin of the land;
  - Signed by the person who made the statement;
  - Signed by two witnesses (the head of the village, the chairperson of RT and *pekaseh*);

The signature is known on behalf of the local village chief.

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