JILPR Vol. 6, No. 2 February 2025
Journal of Indonesia Law & Policy Review 2715-498X

TRANSFER OF RIGHTS TO INDIVIDUAL OWNED LAND TO THE COMPANY

Dani Ramdani Sukirman[1*], Uyan Wiryadi[2], Anwar Budiman[3]
Krisnadwipayana University, Jakarta, Indonesia[1,2,3]

Abstract
The transfer of land rights refers to the process of moving or shifting land ownership from an individual or a group of people to another individual or group. Based on Article 37 of Government Regulation Number 24 of 1997, the transfer of land rights and ownership rights of a strata title unit, such as through sale, exchange, donation, incorporation into a company, and other legal acts of transfer (except for auctions), can only be officially recorded if proven by a deed created by an authorized Notary Public. Although the regulation doesn't explicitly define 'transfer' and 'transferred,' it clearly outlines the process of transferring land rights or ownership rights of a strata title unit. In practice, many people still buy and sell land without involving a notary or a Notary Public. These transactions often involve only a simple receipt as proof of the sale, without any witnesses. Due to a lack of public awareness about land transfer regulations, many land rights are transferred without any legal validity. This research employs a normative juridical approach, examining laws as they are written (law in books) and as they serve as guidelines for appropriate human behavior. It specifically focuses on the resolution of disputes involving the transfer of individual land ownership to a company, as seen in Supreme Court Decisions Number 852 K/Pdt/2021 and Number 213 K/PDT/2020. These cases highlight the importance of legal certainty when contributing buildings (without the land) as capital to a limited liability company. According to Article 34 of the Company Law, there are specific procedures for contributing capital in forms other than cash. To ensure a clear and legally valid process for contributing immovable property (other than land), a deed of contribution must be created before a Notary Public. This deed serves as official proof of the capital contribution to the limited liability company. Landowners whose land has a building that is contributed as capital to a limited liability company generally only retain ownership rights over the land itself. If there is an agreement between the landowner and the building owner (such as a cooperation agreement, profit-sharing agreement, or lease agreement), all terms, rights, and obligations must be clearly defined to prevent future disputes.

Keywords : Transfer of Rights, Land, Individual, Indomarco Prismatama

INTRODUCTION

Land, being the sole necessity for human habitation, has led to an increasing demand for it, whether for agriculture, business, or residential purposes. Consequently, the control or ownership of land has been increasingly fortified over time through various legal measures aimed at preserving and securing ownership. Society is composed of individuals and groups of people with diverse needs and goals. The members of such a society are constantly interacting with one another. These interactions are driven by mutual needs and dependencies (Kusumaalmadja & Sidharta, 2000)

Article 2 paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Provisions, or more commonly known as the Basic Agraria Law, states: "Based on the provisions of Article 33 paragraph (3) of the 1945 Constitution, 'The earth, water, and natural resources therein and controlled by the state shall be used for the greatest prosperity of the people.' The realization of the term 'greatest prosperity of the people' in Article 33 paragraph (3) is a consequence of the term 'controlled by the state' and 'used for the greatest prosperity of the people.' Although these two terms have different meanings, they have the same purpose and are interconnected because the word 'used' is the goal of the word 'controlled,' thus forming a cause-and-effect relationship. Therefore, it can be understood that the word 'used' is a result of state control (Sugiharto, Suratman & Muhsin, 2015).

The right to control land, water, and airspace can be delegated to regional governments and customary law communities, provided that it is exercised in a manner that is not contrary to the national interest, in accordance with government regulations. The legal basis for land rights is stipulated in Article 4 paragraph (1) of the Basic Agrarian Law, which states: "Based on the state's right to control as referred to in Article 2, there are various rights over the surface of the earth, referred to as land, which can be granted to and owned by individuals, either alone or jointly with others, as well as legal entities (Santoso, 2010).

The transfer of land rights means the transfer of ownership from one person or group to another. Land rights can be transferred through sale, exchange, donation, inheritance, incorporation into a company, auction, granting of building rights or rights to use owned land, granting mortgages, granting powers to impose mortgages, or other acts that transfer land rights. Based on Government Regulation Number 24 of 1997, the transfer of land rights and ownership rights of a strata title unit, except through auction, can only be registered if proven by a deed created by an authorized Notary Public.

In practice, many people still buy and sell land without involving a notary or a Notary Public. These transactions often involve only a simple receipt as proof of the sale, without any witnesses. Moreover, many people still hold land ownership documents in the name of the previous owner, without transferring the ownership to their own name. This is due to a lack of public awareness about land transfer regulations and the perception that the process of transferring ownership through a Notary Public is time-consuming and expensive.

RESEARCH METHODS

The type of legal research carried out in this research is normative juridical where law is conceptualized as what is written in statutory regulations (law in books) or law is conceptualized as rules or norms which are benchmarks for human behavior that is considered appropriate (Amiruddin & Asikin, 2012). This research is descriptive-analytic, aiming to focus on solving current problems and actual issues (Surakhmad, 1994).

1. Data and Data Sources
   a. Primary Legal Materials
      1) The 1945 Constitution of the Republic of Indonesia, the Civil Code
      2) Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution

3) Law Number 49 of 2009 concerning the Second Amendment to Law Number 2 of 1986 concerning General Courts
4) Law Number 48 of 2009 concerning the Basic Principles of Judicial Power
5) Supreme Court Decision Number 213 K/PDT/2020
6) Article 651 of the Code of Civil Procedure RV (Reglement op de Rechtsvordering, Staatsblad 1847:52)
7) The Revised Indonesian Regulation, HIR (Het Herzeine Indonesisch Reglement, Staatsblad 1941: 44)
8) Article 705 of the Code of Procedure for Areas Outside Java and Madura (Rechtsreglement Buitengewesten. Staatsblad 1927:227) 9) Service Level Agreement (Warehousing Service) No. 109/CA/CKB-SI/IX/2012, dated October 10, 2012

b. Secondary Legal Materials Data obtained from various legal sources in the form of applicable laws and regulations, reference books, journals, research results related to the research material. Secondary legal materials are closely related to primary materials and can help analyze primary legal materials, such as literature or scientific writings by experts and court decisions.
c. Tertiary Legal Materials Supporting materials that provide clues to primary and secondary legal materials, such as other writings that can provide additional information on primary and secondary legal materials, better known as legal reference materials, such as dictionaries and the internet.

The collection of legal materials is carried out by identifying and inventorying positive legal rules, examining literature (books, scientific journals, research reports), and sources of collected legal materials, followed by classification, selection, and ensuring that they are not contradictory to each other, to facilitate analysis and construction.

The technique of legal interpretation used in this research is systematic interpretation. Research on the legal system can be conducted on specific legislation or recorded law. The aim is to identify the meanings, principles/bases in law, namely the legal community, legal subjects, rights and obligations, legal events, legal relations, and legal objects. Systematic interpretation begins from the view that law is a system, consisting of a number of subsystems. To understand a legal text correctly, the interpreter must relate one provision to another. A piece of legislation is a unified system consisting of chapters, articles, and paragraphs. Each item does not stand alone but is a unity that forms a law.

Drawing conclusions is the result of research that answers the research focus based on the results of data analysis by seeking the meaning of each phenomenon obtained from the field. Researchers try to organize relevant data into information that can be concluded and has a certain meaning. The process can be done by displaying data and interpreting what actually happened and what needs to be followed up to achieve research objectives. The conclusion is presented in a descriptive form about the research object, guided by the research study.

RESULT AND DISCUSSION

Legal Regulation of the Transfer of Ownership of Individual Land to a Company (Contribution in Kind)

The regulation governing the contribution of land to a company in both corporate and agrarian law states that a Limited Liability Company is one of the most popular forms of business organizations. Law No. 40 of 2007 concerning Limited Liability Companies states in Article 1 paragraph 1 that "A Limited Liability Company, hereinafter referred to as the Company, is a legal entity that is a capital partnership, established based on an agreement, conducting business activities with a share capital that is entirely divided into shares and meets the requirements stipulated in this law and its implementing regulations.

Upon its establishment, each founder of a company is obligated to take a share in the company for this requirement to be legally valid (vide Article 7 paragraph (2)), so that the obligation of the company's founders to contribute capital to the company is intended for the company to have initial capital in conducting its activities. If this capital contribution is made in a form other than cash (land), it is first explained that a contribution in kind is a capital contribution made not in the form of cash, but in the form of goods or assets. This term is derived from Dutch. On the other hand, such a transaction with a contribution in kind is also regulated in Article 10 paragraph (5) of the Company Law, which states "The contribution of a Taxpayer in the capital of a corporation may be fulfilled by a cash contribution or a transfer of assets."

Law Number 40 of 2007 concerning Limited Liability Companies also allows for capital contributions to be made in forms other than cash, as referred to in the provisions:
Article 34

1) Contributions to share capital may be made in the form of money and/or in other forms.
2) In the event that contributions to share capital are made in forms other than as referred to in paragraph (1), the valuation of the share capital contribution shall be determined based on the fair value determined in accordance with market prices or by an expert who is not affiliated with the Company.
3) Contributions of shares in the form of immovable property must be announced in one or more newspapers within 14 (fourteen) days after the deed of establishment is signed or after the General Meeting of Shareholders decides on the contribution of such shares.

Therefore, based on the provisions of the aforementioned article, capital contribution in a company can also be made using land, in which case the status of the land will undergo a transfer of ownership from the time the deed of contribution is signed, as this is subject to the provisions of Article 40 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration and Article 103 of the Decree of the Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration.

In Article 2 of Law No. 40 of 2007 concerning Limited Liability Companies, it is stated that a company must have a purpose and business activities that do not contravene the provisions of laws and regulations, public order, and/or morality. Based on this provision, it is mandatory for every company to have a clear and specific purpose and business activities in legal analysis, referred to as the object clause. A company that does not clearly and explicitly state its purpose and business activities is considered legally defective, and therefore its existence is not valid.

Analysis of Dispute Resolution in the Transfer of Ownership of Individual Land to a Company in Supreme Court Decisions Number: 852 K/Pdt/2021 and Number 213 K/PDT/2020

After the final decision was notified to the Appellant on November 6, 2018, the Appellant, through their attorney, filed an appeal on November 16, 2018, as evidenced by the Deed of Statement of Appeal Number 135/Srt.Pdt.Kas/2018/PN Jkt Pst, juncto Number 235/Pdt.G/2017/PN Jkt Pst, issued by the Clerk of the Jakarta Central District Court. The appeal was accompanied by a memorandum of appeal containing the reasons, which was received by the court clerk on November 29, 2018.

Considering that the appeal and its reasons have been properly notified to the opposing party, filed within the time limit and in the manner prescribed by law, therefore the appeal can be formally accepted. Considering that based on the memorandum of appeal received on November 29, 2018, which is an integral part of this decision, the Appellant requests that:
Received the cassation request from the Cassation Applicant (formerly Appellant/Defendant;

12 September 2018 in conjunction with Central Jakarta District Court Decision Number 235/Pdt.G/2017/PN Jkt Pst, dated 4 December 2017;
Judge Yourself:
In Exception: Accept the Defendant's exception in its entirety;
In Main Case:

1. Reject the Plaintiff's claim in its entirety or at least declare the Plaintiff's claim against the Defendant unacceptable (niet onvankelijk verk-laard);
2. Sentence the Plaintiff to pay the costs incurred in this case; Or: If the Supreme Court of the Republic of Indonesia has a different opinion, ask for a decision that is as fair as possible (ex aequo et bono);

Considering that the Respondent has filed a counter-memorandum of appeal on February 1, 2019, which in essence rejects the Appellant's appeal;

Considering that after carefully examining the memorandum of appeal dated November 29, 2018, and the counter-memorandum of appeal dated February 1, 2019, in conjunction with the considerations of the judex facti, in this case the Decision of the Jakarta Central District Court, which was upheld by the High Court of DKI Jakarta, there was no error in the application of the law, with the following considerations:

1. That in the agreement signed by the Plaintiff and the Defendant as stated in Article 3 paragraph (1) of the Lease Agreement Number 2 dated August 7, 2014, it was agreed that the First Party guarantees that the object of the dispute leased in this deed is truly the right of the First Party, free from seizure and has not been sold or leased to another party, and therefore during the term of this lease agreement, the Second Party will not be disturbed or claimed by anyone who claims to have rights over what is leased in this deed;
2. That it turned out that the Plaintiff was obstructed by another party named Robert L. Dewa, who was legally authorized by David Mussry as the landowner, who fenced off access to the Plaintiff's minimarket and demolished the surrounding buildings, causing the minimarket walls to crack and the roof to leak, causing the store to be closed so that the Plaintiff could no longer operate his business;
3. That therefore, the claim for the return of the remaining rent since the store was closed, which is still remaining for 3 (three) years, the renovation costs, and the demolition costs incurred by the Plaintiff should be granted.

Based on the above considerations, it turns out that the decision of the judex facti in this case is not contrary to the law and/or regulations, therefore the appeal filed by the Appellant: Edward Marpaung must be rejected.

Considering, that because the cassation petition from the cassation applicant was rejected and the cassation applicant was on the losing side, the cassation applicant is sentenced to pay the court costs at the cassation level. Pay attention to Law Number 48 of 2009 concerning Judicial Power, Law Number 14 of 1985 concerning the Supreme Court as amended by Law Number 5 of 2004 and the second amendment by Law Number 3 of 2009 and other relevant laws and regulations.
JUDGE

1. Reject the cassation petition from Cassation Applicant EDWARD MARPAUNG;
2. Sentence the Cassation Petitioner to pay the case fees at the cassation level in the amount of IDR 500,000.00 (five hundred thousand rupiah).

Legal Analysis of Certainty of Ownership of Land on which There is a Building Constituted as Capital Participation of a Limited Liability Company

According to Article 19 paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Principles Regulations (usually also called the Basic Agrarian Law, and hereinafter referred to as UUPA) that to guarantee legal certainty by the Government, land registration is

carried out in throughout the territory of the Republic of Indonesia according to the provisions regulated by Government Regulations. The government has issued Government Regulation Number 10 of 1961 concerning Land Registration which was later revoked and replaced with Government Regulation Number 24 of 1997 concerning Land Registration (hereinafter referred to as PP 24/1997).

Article 1 paragraph 1 of PP 24/1997 states that land registration is a series of continuous, consistent, and orderly activities carried out by the Government, which includes the collection, processing, recording, presentation, and maintenance of physical and legal data, in the form of maps and lists, regarding land parcels and strata units, including the issuance of certificates of title for land parcels that have already been titled and ownership rights over strata units as well as certain rights that burden them.

Furthermore, Article 3 letter a and Article 4 paragraph (1) state that one of the objectives of conducting land registration is to provide legal certainty and protection to the holder of rights over a land parcel, strata unit, and other registered rights, so that they can easily prove themselves as the rightful holder. To this end, a certificate of land ownership is issued to the concerned holder.

Based on Article 19 paragraph (2) letter c of the UUPA and Article 32 paragraph (1) of PP 24/1997, a certificate which is a document of proof of land rights serves as strong evidence. The data in the certificate includes data on the type of right, the subject, as well as the location, boundaries, and area, so that the certificate provides legal certainty for such data.

To prove that an individual or a legal entity owns a particular land parcel, evidence is required. Article 19 paragraph (2) letter c of the UUPA and Article 32 paragraph (1) of PP 24/1997 stipulate that a certificate serves as proof of land ownership. A land ownership certificate is issued by the District/City Land Office through a land registration process. Therefore, if a land parcel has not undergone land registration, it will not have a certificate.

Every piece of land throughout the entire territory of Indonesia should be registered at the local District/City Land Office so that complete and comprehensive land data is available, which will automatically benefit all parties, including government agencies themselves and individuals or private parties, especially those who will carry out legal acts or establish legal relations over a particular land parcel.

The government, in this case the Regency/City Land Office as the institution with the authority to carry out land registration, started carrying out land registration in 1961, namely since the enactment of Government Regulation Number 10 of 1961 concerning Land Registration which was later revoked and declared invalid. with Government Regulation Number 24 of 1997 concerning Land Registration. One of the reasons for the issuance of PP 24/1997 was that the legal provisions used as the basis for the implementation of land registration were felt to be insufficient to provide the possibility for land registration to be carried out in a short time with satisfactory results. This was based on the fact that land registration was carried out based on Government Regulation Number 10 of 1961, it was deemed insufficient to provide satisfactory results.

Article 164 HIR/284 RBg and Article 1866 of the Civil Code stipulate that the evidence in civil cases consists of: written evidence/documents, witness testimony, presumptions, admissions, and oaths. Written evidence or documents are anything containing written marks intended to express thoughts or ideas and are used as proof (Mertokusumo, 1985).

In proving the existence of an event or a right, written evidence is used first. If written evidence is absent or insufficient, witness testimony is used. If witness testimony is insufficient, circumstantial evidence is used. If written evidence, witness testimony, and circumstantial evidence are still insufficient, then admissions are added. If these pieces of evidence are still insufficient, then oaths are added (Samudra, 2004).

In the law of evidence, there are three types of documents: authentic instruments, private instruments, and non-documentary writings (Samudra, 2004). An authentic instrument is a document created for the purpose of serving as evidence by or before a public official authorized to do so (Wirjono, 1975)

Based on Article 1, paragraph 20 of PP 24/1997, a certificate is a document of proof of rights as referred to in Article 19, paragraph (2), letter c of the UUPA for land rights, management rights, waqf land, ownership rights over strata units, and mortgages, each of which has been recorded in the relevant land book.

Technically, the definition of a certificate was previously included in Government Regulation Number 10 of 1961, which stated that a certificate is a bound copy of the land book and survey map. The certificate, issued by the National Land Agency (BPN), contains both physical and legal data of a specific land parcel. Physical data relates to the location, boundaries, and area of the land. Legal data pertains to the right holder, the basis of the right, and encumbrances on the land. This data is obtained from the certificate applicant and verified by the BPN through the land registration process. Therefore, in the context of means of proof in civil proceedings as stipulated in Article 164 HIR/284 RBg and Article 1866 of the Civil Code, the certificate has the status of a document that qualifies as an authentic instrument.

Based on the explanation above, it can be understood that if a land parcel does not have or has not yet obtained a certificate, it can be proven with other evidence as stipulated in the provisions of the law. Such other evidence is regulated in Article 164 HIR/284 RBg, Article 1866 of the Civil Code, and Articles 23 and 24 of PP 24/1997, which regulate the proof of land rights for the purpose of land registration.

Article 23 of PP 24/1997 states that for the purpose of registering land rights that have arisen after the enactment of the UUPA, proof can be provided by: (a) a decision on the grant of rights (Decree on the Grant of Rights) over state land or over management rights land by the competent authority, (b) a deed of grant of the Right to Use or the Right to Build on owned land by a Public Notary (PPAT), (c) a deed of endowment, (d) a deed of separation of ownership rights over strata units, and (e) a deed of mortgage.

It can be further explained that for land rights that arise from a decision on the grant of rights by a competent authority, land registration is a requirement for the birth of the respective land right. Since the only proof of right issued in the land registration process is a certificate, it must also be understood that land rights arising from a decision on the grant of rights by a competent authority can only be proven with a certificate. This is different from land rights that arise other than based on a decision on the grant of rights by a competent authority.

However, for land rights that existed before the enactment of the UUPA and can be converted into one of the land rights recognized under the UUPA (or more commonly known as land rights arising from the UUPA conversion provisions), Article 24 paragraph (1) of PP 24/1997 stipulates that, for the purpose of registration, it can be proven by evidence of the existence of such rights, in the form of written evidence, witness testimony, and/or the concerned party's statement, the veracity of which is considered sufficient for registration.

In the Elucidation to Article 24 paragraph (1) PP/1997, it is stated that written evidence can be, among others: (a) deed of eigendom rights issued based on the Overcrijvings Ordonnantie (Stb. 1834-27); (b) proof of ownership issued under the Swapraja Regulations; (c) deed of transfer of rights made privately and bearing a testimonial mark by the Traditional Head/Village/Subdistrict Head made before the enactment of PP 24/1997; (d) auction minutes prepared by an authorized auction official whose land has not been recorded.

Furthermore, Article 24 paragraph (2) PP Number 24 of 1997 states:

In the event that complete evidence as intended in paragraph (1) is not or is no longer available, registration of rights can be carried out based on the fact of physical control of the

land plot in question for 20 (twenty) years or more consecutively. by the registration applicant and his predecessors, with the following conditions:

a. Such possession was carried out in good faith and openly by the concerned party as the rightful owner of the land, and is further supported by the testimony of credible witnesses;
b. Such possession, both before and during the announcement as referred to in Article 26, was not contested by the customary law community, village/urban village concerned, or any other party.
c. Tentu, saya bantu terjemahkan teks tersebut ke dalam bahasa Inggris.

Based on the provisions of PP 24/1997, it can be understood that to prove land rights for the purpose of land registration, it can be done through documents, witness testimony, and/or statements from the concerned party. This provision can certainly be applied mutatis mutandis to the proof of land rights in legal proceedings.

One of the functions of a deed is as a means of proof. As a means of proof, a deed can be categorized into three types of evidentiary force: evidentiary force by appearance, formal evidentiary force, and substantive evidentiary force. Evidentiary force by appearance is the evidentiary force based on the apparent fact that a document that looks like a deed is considered and accepted as a deed unless proven otherwise. Meanwhile, formal evidentiary force is the evidentiary force based on the truth or falsity of the statement in the deed that the signatory declares what is stated in the deed. While substantive evidentiary force is the evidentiary force based on the truth or falsity of the statement that the signatory declares that the legal event stated in the deed has actually occurred.

A certificate, having the status of an authentic instrument, possesses inherent, formal, and substantive evidentiary force. According to Article 165 of the HIR, an authentic instrument has full evidentiary force. This means that what is stated therein must be accepted as true unless proven otherwise.

Regarding the evidentiary force of a land title certificate, there is a specific term in land law provisions, as stipulated in Article 19 paragraph (2) letter c of the UUPA, which states that land registration activities include "issuing certificates of title, which serve as strong evidence."

Similarly, Article 32 paragraph (1) of PP 24/1997 states: "A certificate is a document of proof of rights that serves as strong evidence regarding the physical and legal data contained therein, as long as the physical and legal data are consistent with the data in the relevant survey map and land register.

Furthermore, the Explanation of Article 32 paragraph (1) of PP 24/1997 states that a certificate is strong evidence, meaning that as long as it cannot be proven otherwise, the physical and legal data contained therein must be accepted as true. As long as it cannot be proven otherwise, the physical and legal data contained in the certificate must be accepted as true, both in carrying out daily legal acts and in litigation (Soerodjo, 2003).

In connection with this, it can be understood that a certificate does not have absolute evidentiary force, as it is still possible for it to be declared void or invalid through a court decision. Interested parties may file a lawsuit in court to request the court to declare that a particular land title certificate is invalid.

Based on PP 10/1961, anyone or any legal entity could file a lawsuit against a certificate at any time. However, based on PP 24/1997, which has revoked and declared PP 10/1961 invalid, a lawsuit against a certificate can no longer be filed if a certain period of time has passed and the requirements as stipulated in Article 32 paragraph (2) have been met.

Article 32 paragraph (2) PP 24/1997 states:

If a certificate has been lawfully issued for a particular land parcel in the name of an individual or legal entity who acquired the land in good faith and has been in open possession of it, then any other party claiming to have rights over that land may no longer claim such rights if, within five years from the issuance of the certificate, they have not filed a written objection to the certificate holder and the relevant Land Office or filed a lawsuit in court regarding the possession of the land or the issuance of the certificate.

The Explanation of Article 32 paragraph (2) further elaborates that this provision aims, on the one hand, to adhere to the negative publicity system, and on the other hand, to provide legal certainty to parties who, in good faith, possess a piece of land and are registered as the right holder in the land register, with the certificate as proof. The weakness of the negative publicity system is that the party whose name is listed as the right holder in the land register and certificate always faces the possibility of being sued by another party who claims to have rights over the land. Since Indonesian land law is based on customary law, the institution of "rechtsverwerking" is used to overcome this weakness. In customary law, if someone neglects their land for a certain period of time, and then another person occupies it in good faith, the former loses their right to reclaim the land, which in land law is referred to as the extinguishment of land rights due to abandonment.

Based on these provisions, it can be understood that the 5 (five) year time limit applies if 3 (three) requirements are met, namely;

1) The implementation of land registration resulting in the issuance of such certificate was carried out lawfully, meaning in accordance with the applicable laws and regulations. For example, one of the stages in the land registration process is the publication of the examined land data before the registration of land rights. If the publication is not carried out or is carried out in a manner that does not comply with the regulations or deviates from the purpose of the publication, then it can be categorized as a legal defect in the certification process;
2) The possession of the land by the applicant or their successor was done in good faith. There are certainly legal standards for determining good faith;and
3) The land was possessed physically by the applicant, meaning that legal possession alone is not sufficient. Therefore, if all three of these requirements are not cumulatively met, the five-year time limit cannot be applied.

The regulation, which is still in the form of a Government Regulation, means that judges will, in applying Article 32 paragraph (2) of PP 24/1997 to concrete cases, consider whether the requirements for its application are met, similar to the application of the "rechtsverwerking" institution in customary land. It is the judge who weighs the interests of the parties involved and, in the context of the renewal of national land law, this provision needs to be regulated in the form of a law (Harsono, 2005).

Although the court is authorized to declare a certificate invalid or to state that it has no legal force, the court is not authorized to revoke the certificate. A declaration that a certificate has no legal force and the revocation of a certificate are two different things, although they are related. The fundamental difference lies in the authority and legal consequences. A declaration that a certificate has no legal force is the authority of the court, while the revocation of a certificate is the authority of the BPN.

Based on Article 3 of Presidential Regulation Number 10 of 2006 concerning the National Land Agency and Article 13 of the Regulation of the Minister of Agrarian Affairs/Head of the BPN Number 3 of 1999 concerning the Delegation of Authority for the Granting and Cancellation of Decisions on the Grant of State Land Rights, the Minister of Agrarian Affairs/Head of the BPN has the authority to revoke decisions on the granting of land rights.

Furthermore, Article 104 of the Regulation of the Minister of Agrarian Affairs/Head of the BPN Number 9 of 1999 concerning the Procedures for Granting and Revoking State Land Rights and Management Rights, states that the revocation of a decision on the grant of and a certificate of land rights is issued due to two reasons, namely: (1) due to a legal administrative defect in the issuance of the decision on the grant and/or certificate of land rights, or (2) due to the execution of a court decision that has obtained permanent legal force.

For the revocation of a certificate based on a court decision, the interested party must submit a request to the Head of the BPN. The problem arises if the revocation request is not granted, or before the certificate is revoked, whether the right holder whose name is listed in

the certificate still has rights to the land and what is the status of legal actions based on the certificate that has been declared invalid but not yet revoked by the BPN. This issue has the potential to cause multiple interpretations, depending on the understanding of the position of court decisions and the position of Ministerial Regulations/Head of the BPN in the Indonesian legal system. Some argue that a certificate that has been declared invalid by a court, although not yet revoked by the BPN, has lost its power as an authentic instrument. Thus, from the time the decision is read, the certificate in question can no longer be used as a basis for legal actions (Sartika, 2010). Ideally, the legislation should explicitly state that the revocation of land rights and certificates based on a court decision is purely administrative and does not provide an opportunity for the validity of legal acts on land whose rights and certificates have been declared void and invalid by the court.

Law Number 5 of 1960 concerning Basic Provisions of Agrarian Principles (hereinafter referred to as the UUPA) is a manifestation of Indonesia's maximum effort to free itself from dependence on other nations in the field of land law. Before the enactment of the UUPA, Indonesia adhered to two different land laws, namely: colonial land law, which was embodied in the Burgelijk Wetbook (hereinafter referred to as the BW), and customary land law, which was sourced from customary law (Sukardi, 1997). There is a significant difference between the two land laws, namely that the colonial land law, which is based on the BW, adheres to the principle of accession or also known as the principle of natrekking/accessie. This principle of accession is explicitly stated in the BW, especially in Articles 500, 571, and 601, which state that ownership of a piece of land also includes ownership of everything on or in that land. It can be concluded that land ownership also includes ownership of buildings on it, because buildings are part of the land and buildings erected on land owned by another party will belong to the landowner. The principle of accession adhered to by colonial land law is in stark contrast to customary land law, where customary land law adheres to the principle of horizontal separation. The principle of horizontal separation adhered to by customary land law states that buildings, plants, and other economic objects on the land are not part of the land. It can also be interpreted that ownership of land does not include ownership of buildings on it, buildings are owned by the party who built the buildings.

To realize the unification of law, colonial agrarian regulations and decisions were revoked and a unified national land law in accordance with the personality and unity of Indonesia was formed so that there was no longer a classification of colonial land law and customary land law. However, the unified National Land Law was formed based on the previously applicable customary land law, because customary land law had been adopted by the majority of the Indonesian people (Santoso, 2012). In this case, the application of the horizontal principle in national land law is a result of the establishment of customary land law as the basis for the formation of national land law, as evidenced by the existence of the UUPA itself.

Based on the above explanation, it can be concluded that the principle of building ownership adhered to in the UUPA or the current National Land Law is the principle of horizontal separation, namely the separation of land and buildings standing on it, and that ownership of land does not automatically include ownership of buildings on that land because buildings are owned by the builder of the buildings. The principle of horizontal separation can be found in Article 44 paragraph 1 of the UUPA. The implementation of the principle of horizontal separation is the right to lease for buildings, where a person or legal entity rents vacant land owned by another person to build a building on it by paying a certain amount of rent for a certain period of time agreed upon by both parties. In this right to lease for buildings, there is a horizontal separation between the landowner and the owner of the building on it, where the land belongs to the landowner and the building belongs to the lessee. In short, the landowner is not necessarily the owner of the building.

Apart from the leasehold right, another legal act is a cooperation agreement, where the landowner cooperates with a party who has capital to build a building (such as a hotel) and there is a profit-sharing arrangement involved, which is valid for an indefinite period. Considering the current development of tourism and property, it is possible for such an arrangement to occur. The existence of an agreement between the parties and the good faith of the parties fulfill the requirements for a valid agreement.

Besides Indonesia, which adheres to the principle of horizontal separation, Japan also uses the same principle. In the registration of fixed assets, the registration of land rights does not include the registration of attached objects. Therefore, the adoption of the horizontal government principle in national land law can lead to various problems. Problems can easily arise because there are two rights attached to a piece of land: primary rights and secondary rights. The primary right referred to is ownership (individual or state) and the secondary right is the right to use, the right to build, the right to use for business, the right to manage, and others.

Some of the problems that may arise due to the attachment of these two rights are what happens if, after the secondary right expires, the primary right holder wants to use the land themselves while there is a building standing on it. Indeed, the owner can do anything with their land as long as it is not against the law, but the choices that can be made regarding the land will be very limited due to the existence of a building on it that is not owned by them. In practice, it can be agreed that the secondary right holder will hand over the building to the primary right holder when the secondary right period expires, but the landowner still lacks options about what they can do with their property (land and building) and it is actually unfair to the secondary right holder who has worked hard to build the building but in the end still has to lose their rights.

Unlike the cooperation or profit-sharing agreement mentioned previously, the landowner may also benefit from the results of such cooperation as long as the cooperation between the landowner and the building owner continues. In the course of time, the landowner may want to "do something" with their land, but in reality, this may not be possible due to the existing cooperation agreement. The agreement will certainly outline the rights and obligations of each party and will be explained in the following discussion.

The possession of land and buildings in Civil Law is different from the possession of land and buildings in Land Law as explained above. The possession of land and buildings in Civil Law is based on the BW/Civil Code. Possession in the BW is referred to as "bezit" and is regulated in Article 529 as follows, "possession means the position of controlling or enjoying a thing that is in the power of a person personally or through another person as if the thing were their own property." Based on the formulation of Article 529 of the BW, it can be concluded that the right to possess gives the holder of such right the authority to maintain or enjoy the object possessed as if they were the owner (Siahaan, 1998). Thus, for an object whose owner is not known with certainty, the possessor of such object can be considered the owner of that object.

CONCLUSIONS

The regulation of the transfer of ownership of land from individuals to companies related to legal acts involving the transfer of ownership of land from individuals or legal entities as capital/shares (contributions) to a company. For contributions in the form of immovable property such as land, the regulations stipulate that such contributions must be included in a Deed of Contribution. The contribution agreement, which is included in the Deed of Contribution made by a Notary Public for Land, has fulfilled the provisions of Article 1320 of the Civil Code, so that the agreed contribution agreement is valid and binding, and to enter into a contribution agreement with another party, the bank does not require permission from the authorized party because entering into a contribution agreement is the authority of the Board of Directors of the Company as the company's organ. The procedure for recording the Deed of

Contribution is basically the same as the process and tax treatment for the transfer of land ownership through a sale and purchase transaction.

The resolution of disputes over the transfer of ownership of land from individuals to companies in Supreme Court Decisions Number: 852 K/Pdt/2021 and Number 213 K/PDT/2020 provides legal certainty regarding the contribution of buildings without land as capital for a limited liability company. In the process, Article 34 of the Company Law clearly states what must be done if the capital contribution is in another form. However, for the certainty of the process regarding capital contributions in other forms, in this case in the form of immovable property other than land, the making of a deed of contribution made before a Notary Public for immovable property in the form of land or before a Notary for other immovable property is a valid proof of capital contribution to a limited liability company. Legal protection for landowners on whose land there is a building that has been contributed as capital for a limited liability company. Landowners on whose land there is a building that has been contributed as capital for a limited liability company only have authority over their land. In this case, if the basis of the agreement between the landowner and the owner of the building on the land is based on a cooperation agreement or a profit-sharing agreement or a lease agreement, everything related to the rights and obligations of each party must be stated clearly and in detail to avoid potential problems in the future.

REFERENCES

Amiruddin, & Asikin, Z. (2012). *Pengantar model penelitian hukum.* Raja Grafindo Persada.

Harsono, B. (2005). *Hukum agraria Indonesia: Sejarah pembentukan Undang-Undang Pokok Agraria, isi dan pelaksanaannya* (Cet. 10). Djambatan.

Kusumaalmadja, M., & Sidharta, B. A. (2000). *Pengantar ilmu hukum: Suatu pengenalan pertama ruang lingkup berlakunya ilmu hukum.* Alumni.

Sartika, M. (2010). *Kekuatan hukum sertifikat hak atas tanah yang telah dinyatakan tidak mempunyai kekuatan hukum oleh pengadilan* (Tesis, Program Pascasarjana Universitas Syiah Kuala, Banda Aceh).

Santoso, U. (2010). *Pendaftaran dan peralihan hak atas tanah* (Cet. 1). Kencana Prenadamedia Group.

Santoso, U. (2012). *Hukum agraria: Kajian komprehensif.* Kencana.

Siahaan, M. P. (1998). *Hukum bangunan gedung di Indonesia.* Rajawali Press.

Soerodjo, I. (2003). *Kepastian hukum hak atas tanah di Indonesia.* Arkola.

Sugiharto, U. S., Suratman, & Muhsin, N. (2015). *Hukum pengadaan tanah (Pengadaan hak atas tanah untuk kepentingan umum pra dan pasca reformasi).* Setara Press.

Sukardi. (1997). *Politik hukum terhadap penggunaan hak atas tanah dan bangunan bagi orang asing di Indonesia. Yuridika, XII*.

Surakhmad, W. (1994). *Pengantar penelitian ilmiah: Dasar, metode dan teknik* (Ed. 7). Tarsito.