

# The Legal Certainty Of Land Right Certificate In Supporting Investment Activity

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**Abstract:** This research aims to identify and understand the level of legal certainty of land title certificates that can support the investment made by the investor. This research is an empirical law. The technique of collecting legal material conducted through interviews, questionnaires to respondents and the study of literature, ie by collecting various documents in the form of primary legal materials and secondary legal materials and tertiary legal materials. The results showed that the legal certainty of land title certificates issued by the BPN Bekasi is the main hope for investors who invest in Bekasi. Legal certainty will be determined by the quality of the implementation of the registration of land rights and acquisition of certificates held by the Bekasi District Land Office. To be able to produce the quality of land registration that ensures the legal certainty of land title certificates it has contributed to the success is determined by the attitude and commitment of forces Bekasi District Land Office to carry out the work as stipulated by laws and regulations applicable. In addition, the certificate of legal certainty desired by the investor also determined by the role of the Land Deed Officer (PPAT) in carrying out their duties on the transfer of legal land rights through the deed of transfer of rights made.

**Index Terms:** Investment, Land, Rule of Law, Certificate of Land Rights

## 1 INTRODUCTION

Land as the almighty Gods' grace given to man to be managed, utilized and maintained as well as possible as the source of life and livelihood. At first the land is only used as a place to stay or settlement and as land for agriculture, but in its development, due to the growing needs of life, population growth, and development of technology and economic growth, it eventually also functioned as a place for industrial activities, other businesses activities, commercial buildings, etc. Today, the economic life of society has made the land into a commodity and factors of production necessary for humans. Given the importance of land to humans, then each country has established an agency that has the authority to make arrangements so that the legal relationship between the land and man has certainty. For Indonesia, the proclamation of independence of Republic of Indonesia 17 August 1945, has two important meaning for the preparation of the National Agrarian Law, that is: First, Indonesia nation decide its relation with colonial Agrarian Law; Second, Indonesia nation as well as preparing the National Agrarian Law. Furthermore, substantially, the government authority in regulating the agrarian sector, especially in terms of law traffic and land-use, regulated in Act No. 5 of 1960 on the Basic Regulation of Agrarian. In Article 4 UUPA is determined the kinds of land rights that may be granted by the State (Government) to and owned by the subject of rights that people, either individually or jointly with others as well as legal entities with the authority to use land it just needed to interests that directly relates to the use of land within the limits prescribed by the legislation.

As described above, it is clear that grant or establishment of land rights can only be done by the State through the Government (in this case carried out by the National Land Agency of the Republic of Indonesia), so that any arising problems and disputes regarding land rights is also a portion of the governments' task to resolve it through mediation, unless the parties to resort to resolution through other institutions such as the judiciary. Although, granting or establishment of land rights included in any resolution of land problem was intended as an attempt to guarantee the provision of legal certainty for the rights holder. The development of economic that is taking place today cannot be denied has made land as a capital for both the Government and the private and cooperative. Investment activities undertaken by the private sector cannot be denied also has made land as a means of production and become highly strategic capital in the production process being run. Although, the legal certainty of land rights has been recognized so important in investment activity, but in fact, until today the implementation of the registration of land ownership cannot be realized fully. Even as a comparison, in 2003 the number of land which have already been registered only about 31% of 85 million land in Indonesia, with through various fastest attempt it can registered entire land in Indonesia approximately 20 (twenty) years. Investment activities undertaken by investor were very need legal certainty to land ownership used as production facilities. Legal certainty for land used for economic activities will provide a guarantee in their business activities so that the investor can determine and ensure the return of investments and payback period of the investment. Therefore, the level of legal certainty in land ownership that is used as a means of production by the investors is crucial and will determine a good investment climate for investment.

## 2 METHOD OF RESEARCH

This research is descriptive-analytic with empirical-legal research, as a research that aims to analyze the legislation in force associated with the practice of law enforcement in the community. This research was conducted in Bekasi district, Province of West Java, Indonesia, with the consideration that Bekasi is a district as main site in investment activity so investment mostly done, it is characterized by an existing condition that in Bekasi there is an industrial estate very rapid development, there are the largest industrial estate, namely

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Industrial Estate of Jababeka. Once the primary and secondary data collected, then will be done data grouping based on the suitability of data on the subject studied. Primary and secondary data were then analyzed using qualitative analysis techniques and then presented in the form of descriptive analysis.

### 3 ANALYSIS AND DISCUSSION

#### 3.1 Acquisition of Land Right

In essential, the purpose and function of land registration is to provide legal certainty over lands given by the State to the public. Thus, land registration has benefits both for the people and government itself. The benefits of land registration for the people can be expressed as follows:

- (1) Obtain legal guarantee for holders of certificate of land rights.
- (2) Avoid any disputes about land issues that arise. In rural communities the boundary problem is that it may cause dispute. With the certificate is a proof of land ownership which contains data on juridical and technical data regarding the land rights, then dispute can be prevented and avoided.
- (3) Provide convenience to the parties that require data land that has been registered in the National Land Agency, particularly in the Land Office.

While the benefits of land registration for the government can be expressed as follows:

- (1) The implementation of orderly administration of land, so that if necessary data on land that has been registered with the government can get it quickly.
- (2) Increase states' revenues from other revenue through registration.
- (3) Increase states' revenues from taxes (property tax).

Relating to the procedures for land registration, especially as it applies to the Land Office of Bekasi, Indonesia, that the procedure of land registration is distinguished through means to obtain the land rights, ie: First, registration of land rights that has not been registered, where land rights ownership are not converted into land rights according to UUPA; Second, land rights ownership based on the transfer of rights is due to a legal action/legal events so that the land rights transferred such as trade, inheritance, exchange, or endowments; Third, the granting of rights. Based on the results of questionnaires to investors who have applied for acquired land rights, it can stated investors' response related to the acquisition of the right are applied to the Land Office of Bekasi, as in the following table:

**Table 1.** Satisfaction level of investor in the process of application for acquisition of land right in the Land Office of Bekasi

No	Description	Satisfy	Not Satisfied	Do not know	Total
1.	Services provided by employees of the National Land Agency	15	40	5	60
2.	Time needed for the process of acquisition of rights	7	48	5	60

**Source:** Questionnaire, 2015

Based on Table 1, it appears that the response of investors to the services provided by employees of the National Land Agency of Bekasi district is still largely not satisfied that there were 40 people from 60 people who filled in a questionnaire, or by 66.6% who responded were not satisfied with the services provided by employees of the National Land Agency of Bekasi district. As for the time needed by the investor to obtain a certificate of application for the acquisition of rights submitted to the Land Office of Bekasi district is still largely not give a sense of satisfaction, which are yet to feel satisfaction with the time of the application process the acquisition of rights is 80%, this shows that the level of efficiency in acquisition process of rights is still not work optimally. Related to the time needed to administer the acquisition of land rights that are undertaken by investors, either undertaken individually by investor or represented or authorizes Notary/Land Deed Official, it can be suggested on Table 2 as follows:

**Table 2.** Time needed to administer the acquisition of land rights that are undertaken committed by investors in Office of the National Land Agency of Bekasi district

No.	Period of Time	Total Investor
1.	Between 1 until 2 month	4
2.	Between 2 until 4 month	11
3.	Between 4 until 8 month	35
4.	Between 8 until 10 month	8
5.	Between 10 until 12 month	2
6.	More than 12 month	0
Total Respondent		60

**Source:** Questionnaire, 2015

Based on table 2 above, it is seen that generally the time needed by investors in Bekasi district to obtain the acquisition of land rights are still not efficient since there are 58.3% of investors who administer the land rights of respondents were given a questionnaire still use the time between 4 until 8 months. It is clear from the investor becomes less efficient because as it is understood that the investors in the business requires a level of efficiency in their business management. In general, this indicates that the level of legal certainty in the acquisition of land right and its certification is still low enough so the need to improve prudence in the process of land registration and issuance of land right. This must be done in totality and responsibility to create legal certainty on the certificate is not just the responsibility of the officials of Land Office but will also be a joint responsibility of people, including Land Deed Official.

#### 3.2 Forms of Legal Protection against Investors

##### a) Preventive Action

Recently, public services are still being another problem in the governance mechanisms. There is indication of complicated bureaucracy implementation, too bureaucratic, ineffective and inefficient, unaccountable, corruption, until a number of issues concerning the performance of government officers who tend to be regarded as a problem. Besides, bureaucratic structures that tend to be fat contributing its share to the issue of public service in this country. In this context, the problems of land in various regions currently believed to be quite complex and bureaucratic problems of services at the local level are still not optimal in implementing an effective and efficient service. As an illustration, in 2014 the National Land Agency collects as many 4.291 cases of a total of 7.196 cases of land. Moreover,

the escalation of land conflicts in some areas continues to increase. It shows the National Land Agency and local government, has not had an effective solution to prevent it. This shows that the National Land Agency as stakeholders do not yet have the ability to solve land issues. By referring to the effective and efficient services, land services at the land office should be optimized. Based on the findings, a condition of bureaucracy pathological at land office of Bekasi district is still found, for example, data of physical services, ratio to the target and realization has not yet reached as targeted. This is certainly urgent to formulate the framework of bureaucracy reform, which was then in line with the complex problems of land services in Bekasi. In addition, the development of information technology is so rapid has penetrated into various sectors, including land. Although the land sector is a very important field, but the adoption of information technology is relatively underdeveloped. For example, the majority of land offices in Indonesia have not fully adopted the computerized system. There are still many land offices in the country that still use analog systems, and most still paper-oriented. On the other hand, people realized that information technology as an important tool in human civilization to solve problems with the rapid of information management. Information and communication technologies are now an important part in the management of information. It appears that the application of information technology in the field of land is absolutely applied in the era of digitalization as today. It is known that most of land in this country many do not have certificate. Therefore, the National Land Agency is the party most responsible to resolve it. As the solution of problem is the application of information technology. Information technology has many advantages compared with manual systems, such as having the ability in data storage in larger quantities than manual system, as well as connectivity between regions and between regions with center are more quickly. It also relates to the characteristics of land is multidimensional related to economic, political, social and security of land and culture. Utilization of information and communication technologies in the management of land is also consistent with the view of FIG study (Cadastre 2014 A Vision for a future Cadaster System, FIG, July 1998) regarding the Cadastral forecast in 2014. With the regularity and management of land, particularly the management of land digitally, the process that takes place in land office of Bekasi district has received a positive response from the community, especially investor who do undertake investment in Bekasi, Indonesia. On that basis, according to the author, with Act No. 11 of 2008 on Information and Electronic Transactions and Act No. 14 of 2008 on The Openness of Public Information, there is no longer any reason not to provide an opportunity for the public to gain information on land easily, with easy access to information that can be done through digitalization system of land as a preventive measure.

#### **b) Repressive Action**

The problem of land that emerged lately, more and more complex. The trigger not limited to economic aspects alone, but also social and cultural and even religious. Some issues of land, bias solved properly by the Land Office through "mediation". Mediation is a part of dispute resolution alternative, in addition to negotiation, arbitration and the courts. Mediation is a problem-solving negotiation process in which an impartial third party to cooperate with the disputing

parties to help obtain a satisfactory agreement. Data in the National Land Agency mention total issues of land such as disputes, conflicts, and cases throughout Indonesia 4.591 cases. That makes challenges for the National Land Agency to resolve the issue with the Dispute Completed Operation. The term of resolution for 60 days, while Dispute Investigated Operation is 90 days. If seen from the typology of problems, almost 85 percent is case with the typology of land tenure disputes. As the rest, the typology of rights and land boundary disputes. This clearly shows that most people have been aware of their rights to the land they own and control, apart from the land has certified or not. Recently, in Indonesia many land disputes with various forms, such as public with public, public with individuals, public with legal entities, legal entities with legal entities, legal entities with government agencies, government agencies and the public, and so on. Disputes over land outside the forest area are largely a legacy, as well as the public and business entities and public with government agencies. The National Land Agency, Bekasi district in 2014 recorded about 60 percent of land in the region has not been provided with a single map certificate. Head of the National Land Agency of Bekasi, Dirwan A. Dachri revealed that so far, the land in Bekasi that has the status of a single map has only reached 40 percent. In fact, according to Dirwan, single map certificate was needed to avoid the emergence of dual ownership certificate. The end of dual ownership certificate, there was a land dispute. According to Dirwan, land dispute resolution is very important, because the land is in a state of conflict cannot be managed and used optimally. During 2014 alone, he said, there were 15 cases of land disputes. A total of 13 of these cases have been solved. Dirwan suggested that the first, a land dispute case find a solution through mediation between parties. Based on interviews with Section Head of Land Registry at the Land Office of Bekasi district showed that in 2014 the National Land Agency of Bekasi district has completed 3.500 single map certificates. As for the regular service of the National Land Agency of BPN district targeting 120.000 single map certificates, so that the National Land Agency of Bekasi district making proactive policy by doing service one day is finished, depending on the readiness of each village attended. The service policy as conducted by the National Land Agency of Bekasi district as above then it shows the impartiality of the Land Office of Bekasi district in providing service optimally to the community, including for investors.

#### **4 CONCLUSION**

The legal certainty of land right certificates is main expectation for investors who invest in Bekasi. It is not yet operate optimally because there are still many legal cases against the land which has been issuing certificate by the Land Office of Bekasi district, Province of West Java, Indonesia. Forms of legal protection for investors in the process of land acquisition to support investment activities may consist of preventive and repressive actions. In preventive action, it can be done through: (i) land data management in a professional and accountable; (ii) streamline the process of validation and/or authenticity of land rights certificate will be transfer of rights. While repressive action can be done by optimizing the mediation of land disputes resolution in the Land Office. For the problem of land data management, then it becomes very strategic to generate a justice in the land sector, including justice and certainty for investor that use land as the carrying

capacity of business. To provide efficient and effective services, should administrative processes take place in Land Office of Bekasi district can be done through the principles of "good governance".

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