



## Legal Strength of Certificate of Property Rights to Land which is Enforced Duty for Acquisition of Land Rights Obtained

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### ABSTRACT

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The acquisition fee for land and building rights is payable to be repaid when the acquisition of rights occurs, while on the other hand the Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency in Article 33 does not require the payment of fees for the acquisition of land rights and a certificate is still issued, so that a certificate of land rights is issued which is burdened with an obligation to acquire land and building rights owed. The disharmony of this arrangement creates legal uncertainty so that it affects the legal strength of land rights certificates which are burdened with debt acquisition fees for land and building rights. Based on this background, a normative juridical research method (legal research) is used, with a legal approach and a conceptual approach. The procedure for settlement of fees for the acquisition of land and building rights in the issuance of land rights certificates in Article 33 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency no. 6 of 2018 is contrary to Article 9 paragraph (2) of Law no. 20 of 2000 which regulates fees for the acquisition of land and building rights, so that it does not meet one of the 8 values of legal certainty, namely that a legal system must not contain conflicting regulations. Based on the research, it can be concluded that the certificate of ownership that is charged with the acquisition of land and building rights payable in a complete systematic land registration program does not have legal force, so that it has legal consequences for the object and subject of land rights. it is necessary to harmonize the law against ATR/BPN Regulation No. 6 of 2018.

### KEYWORDS:

Legal Force, Certificate of Land Rights, Fees for Acquisition of Land and Building Rights Payable.

### A. INTRODUCTION

Land Registration is a series of activities consisting of collecting, managing, bookkeeping and presenting and maintaining data on both physical and juridical land parcels carried out by the government on an ongoing and regular basis, which is realized in the form of maps and lists regarding land parcels and apartment units.<sup>1</sup> The existence of land registration is a form of guarantee of legal certainty over a parcel of land rights, this is as mandated in Article 19 of Law Number 5 of 1960 concerning Basic Agrarian Principles.

In order to realize the existence of land registration, a Government Regulation was issued as an implementing regulation that has undergone changes since Government Regulation Number 10 of 1961 concerning Land Registration and then the latest regulation was enacted Government

Regulation Number 24 of 1997 concerning Land Registration. The government appoints the National Land Agency of the Republic of Indonesia to organize land registration, the implementation of which is carried out by the Regency / City Land Agency assisted by the Land Deed Official (PPAT) and other officials. There are several objects of land rights that can be registered including:

1. parcels of land held under right of ownership, cultivation rights, Building rights title and right of use;
2. management rights land;
3. waqf land;
4. ownership rights to a flat unit;
5. mortgages;

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<sup>1</sup> Jimmy Joses Sembiring, *Panduan Mengurus Sertipikat Tanah*, (Jakarta: Visi Media, 2010) p. 22

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### 6. State land.

This land registration system is carried out in two ways, namely systematic and sporadic land registration, both of which are land registration systems for the first time but there are differences where systematic land registration is carried out simultaneously for all unregistered land rights while sporadic land registration can be done individually or in bulk but only for certain areas at the request of interested parties.<sup>2</sup> As a result of this land registration, there is evidence of rights owned by holders of land rights in the form of certificates.

The rate of land registration in Indonesia has always been lower than the government's target. Based on the general explanation of Government Regulation No. 24 of 1997 concerning Land Registration, the first land registration, namely Government Regulation No. 10 of 1961, which has been in effect for more than 35 years, out of approximately 55 million parcels of land rights that are eligible to be registered, only approximately 16.3 million parcels have been registered. Likewise, the enactment of PP No. 24 of 1997 has not been maximized, in the implementation of land registration of 126 million parcels of land in Indonesia only 46 million have been registered, this means that there are 80 million parcels of land that have not been registered. Overcoming the low level of land registration in Indonesia, the government through the Ministry of National Land Agency established a program, namely Complete Systematic Land Registration (PTSL). Complete systematic land registration (PTSL) is the first time Land Registration activities carried out simultaneously for all Land Registration objects throughout the territory of the Republic of Indonesia in one village/kelurahan area or other names of the same level, which includes the collection of physical data and juridical data regarding one or several Land Registration objects for the purpose of registration. As a government program, complete systematic land registration has a regulation that oversees it, which was originally Regulation of the Minister of ATR / BPN No. 35 of 2016 concerning the Acceleration of Complete Systematic Land Registration which was later amended by Regulation of the Minister of ATR / BPN No. 12 of 2017 and then the latest is Regulation of the Minister of ATR / BPN No. 6 of 2018 concerning Complete Systematic Land Registration.

A legal product that is formed cannot be entirely perfect, as is the case with the Regulation of the Minister of ATR / BPN No. 6 of 2018. There are many problems in the regulation, one of which is regarding the Land Acquisition Duty (BPHTB). According to Law No. 20/2000 on Fees on

Acquisition of Land and Building Rights, what is meant by Fees on Acquisition of Land and Building Rights is a tax imposed on the acquisition of rights to land and or buildings, hereinafter referred to as tax. Basically, BPHTB may be payable, but there is a payable limit determined by the BPHTB Law, namely in Article 9 Paragraph (1):

1. sale and purchase is from the date the deed is made and signed;
2. exchange is from the date the deed is made and signed;
3. grant is from the date the deed is made and signed;
4. d. inheritance is from the date on which the person concerned registers the transfer of rights with the Land Office;
5. entry into a company or other legal entity is from the date the deed is made and signed;
6. The separation of rights that results in a transfer is from the date the deed is made and signed;

The Law on BPHTB in Article 9 Paragraph (2) also explains that the tax payable must be paid at the time of acquisition of rights. Based on the above, it means that in order to apply for land registration with the Land Agency, the acquisition duty for land and building rights (BPHTB) must be paid in advance. The transfer of land and building rights that occurs, such as through the sale and purchase process, basically cannot be done under the hand, therefore a Sale and Purchase Deed is made before a Land Deed Official.<sup>3</sup> Before the sale and purchase deed is signed by the authorized PPAT/Notary, proof of BPHTB payment must first be submitted.<sup>4</sup> This is based on the provisions of Article 24 of the BPHTB Law which reads "The Land Deed Official / Notary can only sign the deed of transfer of rights to land and / or buildings when the taxpayer submits proof of tax payment in the form of a Tax Payment Slip for Acquisition of Rights on Land and Buildings".

On the other hand, the provisions on payable Land Acquisition Fees specified in Ministerial Regulation No. 6/2018 on PTSL are inversely proportional to the provisions of the BPHTB Law. Based on the Regulation on PTSL, applicants for land rights can still obtain certificates even though BPHTB is still payable. This is as in Article 33 of the PTSL Regulation which reads "In the event that the recipient of the Land Rights Certificate is not or has not been able to

<sup>2</sup> Bhim Prakoso, *Pendaftaran Tanah Sistematis Lengkap Sebagai Dasar Perubahan Sistem Publikasi Pendaftaran Tanah*, Journal of Private and Economic Law, Vol. 1, No. 1, 2021, h. 66.

<sup>3</sup> Bayu Indra Permana, et.al., *Legal Certainty of Income Tax Exemption on the Transfer of Rights to Land in the Sharing of Collective Integration Rights*, *International Journal of Social*

*Science and Education Research Studies*, Vol. 2. No. 11, 2022, p. 13.

<sup>4</sup> Bayu Indra Permana, et.al., *Problematika Pengenaan Pajak Penghasilan Terhadap Objek Waris: Dalam Perspektif Kepastian Hukum*, (Yogyakarta: Bintang Pustaka Madani, 2023), h. 19.

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pay BPHTB and/or there are arrears of income tax payments by other parties on the land concerned, a Land Rights Certificate can still be issued".

Based on the above description, it is clear that there is a discrepancy or disharmony regarding the provisions of BPHTB payable between Law No. 20 of 2000 and Permen ATR / BPN No. 6 of 2018. According to the Ministerial Regulation, land rights registrants can still obtain certificates even though BPHTB is still owed or has not been paid, whereas the tax payable should be paid at the time of acquisition of rights. The existence of this disharmony affects the legal certainty of the provisions of the regulation of the acquisition fee for land and building rights payable so that it has legal consequences on the legal products produced, namely on the legal force of the certificates issued.

A legislation must basically be interrelated and not overlap or contradict one another. If a Legislation contradicts each other, the value of Legal Certainty will not be achieved. Based on the problems that the author describes above, it is interesting to study the formulation of the problem as follows: Do certificates of ownership rights burdened with acquisition duties on land rights payable in the complete systematic land registration program has legal force. And what are the legal consequences of a certificate of title to land if it is still burdened by the acquisition duty of land rights owed.

### B. RESEARCH METHOD

The research method used is *normative juridical*, this method will direct the research, so that researchers can reveal the truth systematically and consistently, as well as in conducting legal research which also requires a study, legal research is conducted to find solutions to legal issues that arise.<sup>5</sup>

The approach used is related to the legal force of certificates burdened with acquisition duties on land and building rights payable and the legal consequences of certificates can be transferred or not, then the approach used is the approach of the Act (Statute Approach), namely by examining all laws and regulations related to the legal issues being addressed. In addition, a conceptual approach is also used, to obtain views and doctrines that have developed in legal science, so that through this the researcher finds ideas, concepts and legal principles that are relevant to solving the legal issues faced by examining the views and doctrines that have developed.<sup>6</sup>

The method of processing legal materials is carried out deductively, namely drawing conclusions from a concrete problem at hand. The steps begin with identifying legal facts and eliminating irrelevant matters to determine the legal issues to be resolved, collecting legal materials and if deemed to have

relevance also non-legal materials, conducting an analysis of the legal issues raised based on the materials that have been collected, drawing conclusions in the form of arguments that answer legal issues and providing prescriptions based on arguments that have been built in the conclusion.

### C. LITERATURE REVIEW

#### a. Legal Certainty Theory

Legal certainty is a characteristic that cannot be separated from the law, especially for written legal norms, law without certainty value will lose meaning because it can no longer be used as a guide to behavior for everyone, certainty itself is referred to as one of the objectives of the law.<sup>7</sup> Order in society is closely related to certainty in law, because order is the essence of certainty itself, order causes people to live with certainty so that they can carry out activities needed in social life.

Lon Fuller in Principles of Legality argues that there are eight principles that must be observed to recognize the law as a system that fulfills the values of certainty among others:<sup>8</sup>

1. The legal system does not only contain ad hoc decisions but must contain regulations.
2. regulations must be announced
3. regulations may not apply retroactively
4. Rules are formulated in an understandable way
5. A legal system should not contain conflicting rules.
6. A regulation should not contain demands that exceed what can be done;
7. A rule should not be changed frequently
8. there is consistency between the regulations promulgated and their implementation. means human.

#### b. Harmonization Theory

Harmonization according to L.M Gandhi that harmonization in law includes adjustments to legislation, government decisions, judges' decisions, legal systems and legal principles with the aim of increasing legal unity, legal certainty, justice (*justice, gerechtigheid*) and equality (*equit, billijkeid*), usefulness and clarity of law, without obscuring and sacrificing legal pluralism if it is needed.

Legislation is a sub-system of a larger system, namely the legal system that applies in Indonesia, because it contains several parts or components that are interconnected and mutually influencing, if these components conflict with one another then there is a

<sup>5</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana Prenada Media Group: 2013), pp. 3

<sup>6</sup>*Ibid*, p 136

<sup>7</sup> Sulaeman Jajuli, *Kepastian Hukum Gadai Tanah Dalam Islam* (Yogyakarta: Deepublish, 2015) p 51

<sup>8</sup> Lawrence M. Friedman, *Hukum Amerika : Sebuah Pengantar Terjemahan dari American law an introduction, 2<sup>nd</sup> Edition*, Alih Bahasa : Wisnu Basuki (Jakarta: Tatanusa, 2001), pp. 6-8

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conflict of law, for that there are several principles that guide when there is a conflict of law including: <sup>9</sup>

### 1. The principle of Lex Superior Derogat Lex Inferior

Based on this principle, lower laws and regulations such as government regulations must not conflict with higher laws and regulations such as laws, if this happens, the lower laws and regulations, namely government regulations, are overruled.

### 2. Lex Specialist derogat lex generalis

The second principle to overcome legal conflicts between fellow legislation is Lex Specialist derogat lex generalis, the meaning of this principle is that if there is a legal conflict between legislation that is special (special) with legislation that is general (general), then general legislation is ruled out, this legal principle can only be used if the two conflicting laws and regulations are of the same degree.

### 3. The principle of Lex Posteriori Derogat Lex Priori

The third principle to overcome legal conflicts between fellow laws and regulations is the principle of lex posteriori derogat lex priori, which means that if there is a legal conflict between new laws and old laws and regulations, the old laws and regulations are set aside.

### c. Land Registration

The definition of new land registration is contained in Article 1 point 1 of Government Regulation No. 24 of 1997, which is a series of activities carried out by the government continuously, continuously and regularly, including the collection, management of bookkeeping, presentation and maintenance of physical data and juridical data in the form of maps and lists regarding land parcels and units of flats, including the provision of certificates as proof certificates for land parcels that already have rights and ownership rights to units of flats and certain rights encumbered.<sup>10</sup> There are 2 (two) land registration systems, namely: <sup>11</sup>

#### 1. Systematic land registration

It is the first land registration activity carried out simultaneously covering all land registration objects that have not been registered in the area or part of the area of a village/kelurahan. This land registration is organized on the initiative and initiation of the government based on a long-term and annual work plan and is carried out in areas determined by the Minister of Agrarian Affairs/Head of BPN.

#### 2. Sporadic Land Registration

Is a land registration activity for the first time regarding one or several land registration objects in the area or part of the area of a village / kelurahan individually or in bulk. This land registration is carried out at the request of an interested party, namely the party entitled to the object of land registration concerned or his attorney.

### d. Certificate

The definition of Sertipikat according to Article 1 point 20 of Government Regulation No. 24 of 1997, is a letter of evidence of rights, as referred to in Article 19 Paragraph (2) letter c of the UUPA for land rights, management rights, waqf land, ownership rights to apartment units and mortgage rights, each of which has been recorded in the relevant land book. Urip Santoso also argues that there are several criteria for a certificate of land rights to be a strong or even absolute proof of rights for holders of land rights if it fulfills several things including: <sup>12</sup>

1. A land title certificate must be issued legally in the name of the person or legal entity that holds the land title.
2. every person or legal entity in obtaining land rights in good faith;
3. The object of the land right is actually worked on, meaning that the subject actually physically controls and works on the object of the land right.
4. No written objection has been made to the owner of the certificate or to the district land office, nor has there been a court challenge within five years of the issuance of the certificate.

### e. Land Acquisition Duty

Acquisition Duty of Right on Land and Building (BPHTB) is a tax imposed on the acquisition of rights to land and or buildings, hereinafter referred to as tax.<sup>13</sup> Based on Article 4 Paragraph (1) of Law Number 21 Year 1997 on Fees on Acquisition of Rights on Land and Buildings, every individual or legal entity that acquires rights on land and buildings is a tax subject subject to fees on acquisition of rights on land and buildings.<sup>14</sup>

There are several principles of land acquisition duty collection adopted by the Land Acquisition Duty Law:

1. The fulfillment of BPHTB obligations is self-assessment where taxpayers are authorized to calculate their own taxes.

<sup>9</sup> Muhammad Bakri *Pengantar Hukum Indonesia: Sistem Hukum Indonesia Pada Era Reformasi*, (Malang: Universitas Brawijaya Press, 2013) pp 279-320.

<sup>10</sup> Rahadiyan Veda Mahardika, & Gatot Suyanto, *Kedudukan Hukum Badan Bank Tanah Dalam Pengadaan Tanah Untuk Kepentingan Umum*, Jurnal Ilmu Kenotariatan, Vol. 3, No. 2, 2022, p. 62.

<sup>11</sup> Aartje Tehupeiory, *Pentingnya Pendaftaran Tanah di Indonesia*, (Jakarta: Raih Asa Sukses 2012) p. 15

<sup>12</sup> Urip Santoso II *Sertipikat Hak Atas Tanah*, (Jakarta, kencana, 2010), p. 261.

<sup>13</sup> Misbah Imam Soleh Hadi & Bayu Indra Permana, *Konstruksi Hukum Pembebasan Pajak Penghasilan Terhadap Peralihan Hak Atas Tanah Dalam Pembagian Hak Bersama Waris*, Jurnal Ilmu Kenotariatan, Vol. 3, No. 1, 2022, p. 15.

<sup>14</sup> Editor Sinar Grafika, *Seri Perpajakan PBB*, (Jakarta: Sinar Grafika), pp. 82

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2. The rate in calculating the land acquisition duty payable is 5% of the acquisition value of the taxable object.
3. Against taxpayers and public officials who have a relationship in the settlement of acquisition duties on land rights payable if they violate the provisions and do not carry out their obligations will be subject to sanctions based on applicable laws and regulations, this right is intended so that the implementation of the bphtb law applies effectively.
4. In order to take advantage of regional autonomy to increase local revenue so that regional development can be realized, BPHTB revenue is state revenue that is transferred to local governments.
5. There shall be no levies on the acquisition of land and building rights outside the provisions of the law.

### D. DISCUSSION

#### 1. The Legal Power of Land Ownership Certificates Based on Legal Certainty in the Arrangement of Fees on Acquisition of Land Rights Payable"

##### a. Principles of Fees on Acquisition of Land and Building Rights Payable

Based on the nature of taxes and other levies such as land acquisition duties that are compelling in nature, it is clear that there are laws that regulate them, Law No. 20 of 2000 concerning Fees on Acquisition of Land and Building Rights is a regulation that covers all aspects of tax levies in the form of land acquisition duties. The process of paying the Land Acquisition Duty based on Article 10 Paragraph (1) of Law No. 20/2000 on Land Acquisition Duty determines that the payment process is carried out by self-assessment. Through the Self Assessment System, taxpayers are authorized to make their own calculations of the tax payable for which they are responsible with a deposit letter for land rights acquisition duties.

Based on this explanation, it is clear that there are differences between taxes and duties, both in terms of how the amount is determined and when it becomes payable. It is important to know when a tax is payable because it is the determining factor when the taxpayer is required to pay off the tax payable, as well as the land acquisition duty which has a time limit on the payable so that it must be paid at the time of acquisition of land and building rights. According to Suroyo, the

general rule in positive law determines that the time when tax is payable is the time of delivery, for immovable goods the time of delivery is the time when the legal rights to the goods transfer.<sup>15</sup>

Based on this, in relation to the acquisition duty of land and building rights whose objects are land and buildings, where land and buildings according to Article 504 BW are immovable objects, it is clear that the time when it is payable as point 2 (two) that the time of delivery is the time of legal transfer of the right. The legal transfer of rights in the process of buying and selling land rights occurs during the transaction between the seller and the buyer. This is also explained in SEMA Number 04 of 2016 concerning the Implementation of the Formulation of the Results of the 2016 Plenary Meeting of the Supreme Court Chamber as Guidelines for the Implementation of Tasks for the Courts, that the transfer of land rights based on a Sale and Purchase Agreement (PPJB) legally occurs if the buyer has paid the full price of the land and has controlled the object of sale and purchase and is carried out in good faith.<sup>16</sup>

Law No. 20/2000 on Fees for Acquisition of Land and Building Rights in Article 9 states that the time when tax is payable on the acquisition of rights to land and or buildings for sale and purchase is from the date the deed is made and signed. Article 9 paragraph (2) also explains that the tax payable must be paid at the time of acquisition of rights. In practice, the deed of sale and purchase cannot be made immediately, there is a preparatory process that must be completed by the parties involved in the transaction:<sup>17</sup>

1. The PPAT must check the authenticity of the certificate with the land office;
2. The seller must pay income tax (PPH) at the post office, perception bank, or other places designated by the minister in accordance with Law Number 17 Year 2000. Banks and post offices or other designated institutions have prepared special deposit receipts for income tax payments;
3. The seller must make a statement that the land purchased is not in dispute, PPAT has the right to refuse to make AJB if there is still a dispute;
4. The prospective purchaser makes a declaration that by purchasing the land, he or she will not become the holder of a right that exceeds the maximum size limit;
5. Prospective buyers must pay the acquisition fee for land and building rights (BPHTB) to a perception bank

<sup>15</sup> Chairil Anwar Pohan, *Pedoman lengkap pajak pertambahan Nilai*, (Jakarta: Gramedia Pustaka Utama, 2016) p 122

<sup>16</sup> Circular Letter No. 4/2016 on the Implementation of the Formulation of the Plenary Meeting of the Supreme Court

Chamber in 2016 as Guidelines for the Implementation of Tasks for the Court

<sup>17</sup> Kian Goenawan, *Panduan Mengurus Sertipikat Tanah dan Properti*, (Jogjakarta: Best Pulisher, 2009) p. 74

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(whose authority is appointed by the minister based on Law No. 18 of 2000), post office or other institution.

Based on the sequence of the process of making a sale and purchase deed, it is clear that the time when the acquisition duty on land and building rights becomes payable is when the right is acquired, meaning that payment of the acquisition duty on land and building rights must be made prior to the making of the sale and purchase deed, thus land registration for the issuance of a certificate can only be carried out if every process both before and during the making of the sale and purchase deed has been fulfilled. There is even a provision that clearly regulates the prohibition for the official concerned to sign the deed if the land acquisition duty has not been paid, this is as in Article 24 Paragraph (1) of Law No. 20 of 2000 concerning Fees on Acquisition of Rights on Land and Buildings that the Land Deed Official/Notary can only sign the deed of transfer of rights on land and or buildings when the taxpayer submits proof of tax payment in the form of a Tax Payment Slip for Acquisition of Rights on Land and Buildings. Based on the above description, starting from expert opinion, legal dogma in the Law that specifically regulates land rights acquisition duties as well as the process and procedures for making deeds, the time when the land rights acquisition duty is due is when the right is acquired and must be paid before the sale and purchase deed is made as a condition for the transfer and registration of land rights.

### **b. Fees on Acquisition of Land and Building Rights Payable in Complete Systematic Land Registration.**

Regarding the acquisition fee for land rights in land registration through the complete systematic land registration program, it is at the post-affirmation stage of conversion, recognition of rights and granting of rights, which is the process of proving new rights in land registration. In the decree granting this right, there is an attachment to the proof of payment of acquisition fees for land and building rights. In complete systematic land registration, the accounting and issuance of land rights certificates can still be carried out even if the acquisition duty on land and building rights has not been paid, meaning that the time when the acquisition duty on land and building rights becomes payable in complete systematic land registration is not the time when the rights are acquired, as is the case with provisions that specifically regulate the acquisition duty on land and building rights. However, there are conditions that must be met for the registration of rights and the issuance of certificates without payment of the acquisition duty on land and buildings. These conditions are contained in Article 33 of Ministerial Regulation No.6 of 2018, whereby a party who has not been able to settle or pay the acquisition duty on land rights can still obtain a certificate by making a declaration of acquisition duty on land rights payable. The declaration of land acquisition duty payable must be made and signed by the subject concerned, but no time

period is given for the payable land acquisition duty in this land registration program.

Regarding the regulation of fees for acquisition of land and building rights payable, there are differences in the regulations in Law No. 20 of 2000 and the regulation of the Minister of Agrarian and Spatial Planning of the National Land Agency No. 6 of 2018, this reflects the inconsistency in the regulation of fees for acquisition of land and building rights payable. The existence of inconsistencies in a regulation can occur due to discrepancies and contradictions between one legislation and another. According to Lon Fullen, conflicting laws and regulations do not fulfill one of the values of legal certainty. The existence of conflicting arrangements in the regulation of land acquisition fees payable clearly has legal consequences for the resulting legal product, namely the land title certificate in terms of its legal force.

### **2. Legal Consequences of Land Ownership Certificates that are still burdened by Fees on Acquisition of Land Rights Payable**

The issuance of certificates of land rights resulting from the complete systematic land registration program that are encumbered by outstanding land acquisition duties has widespread legal consequences for this final product of land registration. The fact that a land title certificate is still encumbered by the acquisition duty not only affects its legal force and function but also has legal consequences both for the object of land registration and for the subject and related officials. Regarding the Regulation of the Minister of Agrarian Affairs/Spatial Planning of the National Land Agency No. 6 of 2018 which regulates the complete systematic land registration program, it is not based on Law No. 20 of 2000 concerning acquisition duties on land and buildings, because the determination of acquisition duties on land and buildings payable in PTSL only requires a statement letter of acquisition duties on land and buildings payable but does not provide a period of time for the repayment of acquisition duties on land and buildings for which the taxpayer is responsible, even though there are provisions in the law on acquisition duties on land and buildings imposing sanctions for late payment of acquisition duties on land.<sup>18</sup>

The repayment of fees for the acquisition of land and building rights payable, which is part of the land registration process, also involves several public and government officials, such as land deed officials/notaries, auction officials, officials who issue decrees granting rights and district land officials. For all of these officials, there are prohibitions and binding provisions related to the payment of land rights acquisition fees.

Not only does the issuance of this certificate have the consequence of the sanctions described in the Land Rights Acquisition Duty Law, but Ministerial Regulation No. 6/2018 of the Ministry of Agrarian Affairs/Spatial Planning of the

<sup>18</sup> Bhim Prakoso, *Loc. Cit.*

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National Land Agency also has legal consequences for land certificates that are burdened with BPHTB payable.

The existence of arrears of payment of acquisition duty on land and buildings payable stated in the statement of acquisition duty on land and buildings payable will be included in the land book and land title certificate, so that it can be known that the certificate is still burdened by acquisition duty on land and buildings payable. However, there are consequences and legal effects on the land rights certificate as in Article 33 Paragraph (8) explains that the transfer of rights or changes to the land book and land rights certificate can only be made after the person concerned can prove that the BPHTB payable and / or income tax payable has been paid by each taxpayer. The transfer of land rights is the transfer of land rights from the old rights holder to the new rights holder.<sup>19</sup> In addition to not being able to transfer land rights, a consequence of the issuance of a certificate of land rights that is burdened with the acquisition duty on land and building rights payable is that no changes can be made to the land book. The land book is a document in the form of a list containing juridical and physical data on an object of registration to which a right already exists.<sup>20</sup>

It is impossible for changes in the land book not to occur during the ownership of land rights because it is impossible for legal acts such as splitting, separating, combining land rights or legal events such as inheritance to cause changes in physical and juridical data. In some cases, changes in physical and juridical data do not only occur when there are legal acts or legal events, but because of government policies that have an influence on the object of land rights. One of them is due to the policy of regional expansion, deletion and merging of regions. As a result of these government policies, it is certain that the physical object of rights has also changed. This condition causes differences in physical data in the land book because the physical object of the right has also changed. In the event of physical changes to the title object that cause the physical data in the certificate to differ from the actual situation, but with the prohibition on making changes to the land book in PTSL repairs cannot be made. Government Regulation No. 24/1997 on Land Registration stipulates in Article 36 that changes to physical or juridical data must be registered.<sup>21</sup>

### E. CONCLUSION

1. A certificate of ownership that is burdened with acquisition duties on land and building rights payable under the complete systematic land registration program does not have legal force, this is because the procedure for settling acquisition duties on land and building rights in the issuance of land certificates in Article 33 of Minister of Agrarian Affairs and Spatial Planning/National Land Agency Regulation No. 6 of 2018 contradicts Article 9 paragraph (2)

of Law No. 20 of 2000 which regulates acquisition duties on land and building rights, thus not fulfilling one of the 8 values of legal certainty, namely that a legal system must not contain conflicting regulations. 20 of 2000, which regulates acquisition fees for land and building rights, so that it does not fulfill one of the eight values of legal certainty, namely that a legal system should not contain conflicting regulations, and this has an impact on the legal force of land rights certificates issued because it eliminates the authority of right holders to transfer their rights and is unable to provide legal protection for creditors.

2. There are several legal consequences that arise when a land title certificate is still encumbered by payable land acquisition duties. These legal consequences arise because of inconsistent regulations that violate the provisions of higher regulations and give legal consequences, namely first, the consequences for the object of the right, namely the certificate of land rights that cannot be transferred, encumbered by mortgages and changes in the land book, secondly for the subject of the right that is burdened with sanctions for late payment of land acquisition duties and for creditors who do not receive legal protection, thirdly, the consequences of administrative sanctions to officials related to land registration.

### REFERENCES

1. Aziz, Noor M. 2010. *Eksistensi Peraturan Perundang-Undangan D Luar Hierarki*, Pusat Penelitian dan Pengembangan Sistem Hukum Nasional Badan Pembinaan Hukum Nasional Kementerian Hukum dan HAM RI.
2. Bakri, Muhammad. 2013. *Pengantar Hukum Indonesia: Sistem Hukum Indonesia Pada Era Reformasi* Malang: Universitas Brawijaya Press.
3. Friedman, Lawrence M. 2001. *Hukum Amerika: Sebuah Pengantar, Terjemahan dari American Law An Introduction, 2nd Edition*, Alih Bahasa: Wisnu Basuki, Jakarta: Tatanusa.
4. Goenawan, Kian. 2009. *Panduan Mengurus Sertipikat Tanah dan Properti*, Jogjakarta: Best Pulisher.
5. Hadi, Misbah Imam Soleh, & Bayu Indra Permana, *Konstruksi Hukum Pembebasan Pajak Penghasilan Terhadap Peralihan Hak Atas Tanah Dalam Pembagian Hak Bersama Waris*. Jurnal Ilmu Kenotariatan. Vol. 3, No. 1, 2022.
6. Hanafi. 2016. *Hukum Agraria*, Pamekasan: Duta Media.
7. Jajuli, Sulaeman. 2015. *Kepastian Hukum Gadai Tanah dalam Islam*. Yogyakarta: Deepublish.

<sup>19</sup> Hanafi, *Hukum Agrari*, (Pamekasan: Duta Media, 2016) p 75

<sup>20</sup> Urip Santoso, *Peralihan Hak Atas Tanah*, (Jakarta: Kencana, 2014) p. 220

<sup>21</sup> *Ibid*

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8. Mahardika, Rahadiyan Veda, & Gatot Suyanto. *Kedudukan Hukum Badan Bank Tanah Dalam Pengadaan Tanah Untuk Kepentingan Umum*. Jurnal Ilmu Kenotariatan. Vol. 3. No. 2. 2022.
9. Marzuki, Peter Mahmud. 2013. *Penelitian Hukum*, Jakarta: Kencana Prenada Media Group.
10. Permana, Bayu Indra, Bhim Prakoso, & Iswi Hariyani. *Legal Certainty of Income Tax Exemption on the Transfer of Rights to Land in the Sharing of Collective Integration Rights*. *International Journal of Social Science and Education Research Studies*. Vol. 2, No. 11, 2022.
11. Permana, Bayu Indra, Bhim Prakoso, & Iswi Hariyani. 2023. *Problematika Pengenaan Pajak Penghasilan Terhadap Objek Waris: Dalam Perspektif Kepastian Hukum*. Yogyakarta: Bintang Pustaka Madani.
12. Pohan, Chairil Anwar. 2016. *Pedoman lengkap pajak pertambahan Nilai*, Jakarta: Gramedia Pustaka Utama.
13. Prajitno, A. A. Andi. 2017. *Apa dan Siapa PPAT*, Surabaya: Perwira media Nusantara.
14. Prakoso, Bhim. *Pendaftaran Tanah Sistematis Lengkap Sebagai Dasar Perubahan Sistem Publikasi Pendaftaran Tanah*. *Journal of Private and Economic Law*. Vol. 1. No. 1, 2021.
15. Redaksi Sinar Grafika. *Seri Perpajakan PBB*, Jakarta : Sinar Garfika.
16. Saifudin. 2007. *Dalam Akta: Apa dan Bagaimana?*, Jakarta: Bintang Persindo.
17. Santoso, Urip. 2010. *Sertipikat Hak Atas Tanah*. Jakarta: Kencana.
18. Santoso, Urip. 2014. *Peralihan Hak Atas Tanah*. Jakarta: Kencana.
19. Sembiring, Jimmy Joses. 2010. *Panduan Mengurus Sertipikat Tanah*, Jakarta: Visi Media.
20. Tehupeiory, Aartje. 2012. *Pentingnya Pendaftaran Tanah di Indonesia*, Jakarta: Raih Asa Sukses.