

Research Article

# Legal Consequences of the Non-Functioning of *Contradictoire Delimitatie* in the Systematic Land Registration Program (PTSL)

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**Abstract:** Measurement is a crucial initial step in the land registration process, as stipulated in Article 19 paragraph (2) letter a of the Basic Agrarian Law (UUPA). Article 17 of Government Regulation No. 24 of 1997 on Land Registration emphasizes that measurements must be supported by physical data and boundary arrangements based on the agreement of adjacent landowners. One key principle in this process is the *contradictoire delimitatie* principle, which requires the presence of interested parties during the determination of land boundaries. This thesis aims to analyze the function of *contradictoire delimitatie* in the measurement results of the Complete Systematic Land Registration Program (PTSL), as well as to examine the legal consequences if this principle is not implemented. The study is expected to contribute to the development of legal knowledge in the field of land affairs and serve as a reference for academics, legal practitioners, judicial institutions, law enforcement officials, and land authorities. In practice, if the subject of a land parcel is unknown, information is obtained from neighboring landowners, community leaders, or relevant officials, and recorded in the Measurement Sketch (Gambar Ukur or GU). If boundary agreements have not been reached, dotted lines are used to indicate temporary boundaries. When the Work Map is attached to the GU, the landowner or their representative may sign it as a form of boundary agreement. The absence of the *contradictoire delimitatie* principle hinders the measurement process, map creation, land registration, and issuance of land rights certificates. Furthermore, unclear or poorly maintained boundaries often lead to overlapping claims and disputes in the field.

**Keywords:** *Contradictoire Delimitatie*; Complete Systematic Land Registration (PTSL); Land Boundary Disputes; Legal Consequences; Land Measurement and Mapping

Received: 12 May, 2025

Revised: 15 June, 2025

Accepted: 13 July, 2025

Online Available : 16 July, 2025

Curr. Ver.: 16 July, 2025



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## 1. Introduction

Land is a fundamental element of human life. It is an inseparable part of human existence, serving as the foundation for various activities essential to sustaining life. The evolving relationship between humans and land gives rise to various legal actions, such as buying and selling, exchanging, leasing, granting, and inheritance. These legal relationships reaffirm the central role of land in human life. According to Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), it is stated that: “The land, water, and natural resources contained therein are controlled by the state and shall be used for the greatest prosperity of the people.”

In this regard, the state plays a crucial role in protecting land for the welfare of the people. If a parcel of land is abandoned, poorly maintained, or left idle without valid and authentic proof of ownership, it may be subject to state ownership. Therefore, it is essential to ensure the protection of land and its rightful owners, as well as to guarantee legal certainty regarding land rights.

Indonesia has a legal framework governing land affairs, namely agrarian law, which regulates land and all matters related to it. Within agrarian law, land registration is recognized as the initial process in establishing legal proof of land ownership, providing legal certainty for the land rights holder. Land registration is regulated under Article 19 of Law Number 5 of 1960 concerning the Basic Agrarian Principles (commonly referred to as the Agrarian Law), which states that, in order to guarantee legal certainty, the government through the Minister of Agrarian Affairs shall carry out land registration, taking into account the conditions of the country and society. This land registration includes land measurement, mapping, and recording.

As stipulated in Article 19 paragraph (2) letter a of the Agrarian Law (UUPA), the land registration process includes land measurement, which is a crucial and initial step in determining land boundaries. Meanwhile, Article 17 of Government Regulation Number 24 of 1997 concerning Land Registration states that:

- 1) To obtain the physical data required for land registration, land parcels to be mapped shall be measured after their location and boundaries have been determined, and, as necessary, boundary markers shall be placed at each corner of the respective land parcels.
- 2) In determining land parcel boundaries during systematic and sporadic land registration, efforts shall be made to establish boundaries based on the agreement of the interested or adjoining parties..
- 3) The placement and maintenance of boundary markers shall be the responsibility of the respective land rights holder. The establishment of these boundaries is essential to prevent boundary disputes among landowners.

The placement of land boundary markers by the landowner, with the consent of adjoining neighbors and witnessed by village officials or authorized personnel, is referred to as the principle of *contradictoire delimitatie*. This principle is evidenced by a written statement of agreement, signed directly by the landowner, the adjoining landowners, and the attending witnesses, namely village officials. The *contradictoire delimitatie* principle is a fundamental requirement that must be fulfilled by landowners, as it serves as a primary and essential prerequisite for registering the land with the land office..<sup>1</sup>

Although land registration and its governing principles have been well regulated with clear legal foundations, many community members remain indifferent, leading to various problems. One common issue encountered in the field is the loss of land boundaries due to landowners failing to maintain and safeguard these boundaries properly. As a result, during measurements by land office surveyors, new boundaries are installed without the presence of adjoining neighbors, which can lead to errors in determining the actual land limits. Frequently, neighboring landowners neglect their attendance, considering the measurement process unimportant for various reasons. This neglect often results in disputes among landowners, boundary encroachments, and the absence of mutual agreement in boundary determination. This situation indicates a failure to fulfill the principle of *contradictoire delimitatie*. If the implementation of the *contradictoire delimitatie* principle is not conducted in accordance with the law, it may cause land disputes in the future.

Besides human negligence in maintaining land boundaries properly and the absence of relevant parties during the measurement process, there are other factors that can affect the function of the *contradictoire delimitatie* principle in land registration. Regulatory shifts and

discrepancies between previous and current regulations also play a role, especially when innovations aimed at accelerating land registration processes result in policies that are not fully aligned with higher-level regulations. This divergence can be observed in Government Regulation Number 10 of 1961, Government Regulation Number 24 of 1997, Minister of Agrarian Affairs Regulation Number 35 of 2016, and Government Regulation Number 18 of 2021. Within these four regulations, gaps exist that have led to a weakening of the enforcement and significance of the *contradictoire delimitatie* principle concerning land boundaries.

The issuance of several regulations mentioned above has created a situation where the land registration process initially beginning with the measurement of land boundaries based on *contradictoire delimitatie* agreements between neighboring landowners is seemingly expedited by the government across the entire territory of Indonesia without thorough consideration. This acceleration has led to a relaxation of the importance of the *contradictoire delimitatie* principle as a fundamental initial step in creating a secure and orderly land environment.

The determination of land boundaries is based on an agreement between the landowner and the neighboring parties. The principle of *contradictoire delimitatie* serves as the initial stage in the land measurement process conducted by the landowner and adjacent landowners. Besides the absence of landowners, this principle cannot function properly due to land rights holders failing to maintain the boundary markers, as well as boundary disputes, family or neighbor conflicts, and land disputes that have escalated to the court. Therefore, the research problem addressed in this study is: What are the legal consequences if the *contradictoire delimitatie* of land boundaries resulting from the measurements under the Complete Systematic Land Registration (PTSL) program fails to function.

## 2. Preliminaries or Related Work or Literature Review

### 2.1. Object of Land Registration and Types of Land Rights Certificates

The Basic Agrarian Law (UUPA) regulates that the land rights subject to registration include Ownership Rights as stipulated in Article 23, Right to Cultivate (Hak Guna Usaha) in Article 32, Right to Build (Hak Guna Bangunan) in Article 38, and Right to Use (Hak Pakai) in Article 41. Meanwhile, Building Lease Rights (Hak Sewa untuk Bangunan) are not required to be registered. However, Article 9 of Government Regulation Number 24 Year 1997 concerning Land Registration governs several objects of land registration, which include:

- a. Ownership Rights (Hak Milik)
- b. Right to Cultivate (Hak Guna Usaha)
- c. Right to Build (Hak Guna Bangunan)
- d. Right to Use State Land.
- e. Right to Use Management Land.
- f. Management Rights over Land.
- g. Waqf Land (Endowed Land)
- h. Ownership Rights over Condominium Units (Strata Title Rights).
- i. Mortgage Right.<sup>2</sup>

Rights that can be applied for or issued as land rights certificates by the Land Office include, among others:

a. Ownership Rights (*eigendom right*)

Ownership rights are the strongest rights over a piece of land, meaning these rights are absolute and cannot be contested by other parties. According to Article 20 paragraph (1) of the Basic Agrarian Law (UUPA), it states: "Ownership rights are hereditary rights, the strongest and fullest rights that a person can have over land, taking into account the provisions in Article 6 of the UUPA." The terms "strongest and fullest" are intended to distinguish ownership rights from other land rights such as the right to cultivate (Hak Guna Usaha), the right to build (Hak Guna Bangunan), and the right to use (Hak Pakai), indicating that among all land rights owned by individuals, ownership rights hold the highest and most complete legal authority. Ownership rights also have an economic function, as they can be used as collateral for debt secured by encumbrances, as regulated in Article 26 of the UUPA.<sup>3</sup>

Ownership rights are fundamental rights for every individual. Indonesia adheres to the concept of fundamental rights as a citizen, meaning that a citizen also has the basic obligation to respect the fundamental rights of other citizens. The human rights in Indonesia are not absolute or individualistic rights exercised with complete freedom. In this regard, the distinctive characteristic of ownership rights is that they are hereditary, strongest, and most complete. The fact that ownership rights are strong means that these rights cannot be easily revoked and can be defended against interference by other parties. Article 21 paragraphs (1) and (2) of the Basic Agrarian Law (UUPA) regulate limitations on land ownership. These articles stipulate that the holders of ownership rights are Indonesian citizens and legal entities designated by the government who meet certain requirements to own ownership rights. Meanwhile, persons are obliged to relinquish ownership rights over land pursuant to Article 21 paragraphs (3) and (4) of the UUPA, as follows:

- 1) Foreign citizens.
- 2) Indonesian citizens who hold ownership rights but lose their citizenship after the enactment of the Basic Agrarian Law (UUPA).
- 3) Individuals who hold dual citizenship status.

Ownership rights to land can arise through three (3) methods as stated in Article 22 of the Basic Agrarian Law (UUPA), namely: 1) Ownership rights to land arising according to customary law; 2) Ownership rights to land arising due to government decree; 3) Ownership rights to land arising based on statutory provisions..<sup>4</sup>

b. Right to Cultivate

Right to Cultivate is a land right where ownership is granted to a subject over land for a certain period, and once the period expires, the land must be returned to the state. This means that the ownership right under Hak Guna Usaha is temporary. Accordingly, the characteristics of Hak Guna Usaha are as follows:

- 1) The right to use state land for the purposes of agricultural, fisheries, and livestock enterprises..
- 2) The term is 25 or 35 years and can be extended for an additional 25 years..
- 3) The minimum area is 5 hectares; if the area exceeds 25 hectares, good corporate techniques must be applied.
- 4) Can be transferred and assigned.
- 5) Can be used as collateral for credit by imposing a Mortgage Right (Hak Tanggungan).<sup>5</sup>

### c. Right to Build and Own a Building

Right to Build is the right to construct and own a building on a plot of land where the land itself does not belong to the building owner. The ownership period is a maximum of 30 years and can be extended for an additional maximum period of 20 years. Thus, in this case, the building owner is different from the owner of the land rights on which the building is erected. This means that a holder of the Right to Build is distinct from the holder of the Right of Ownership (Hak Milik) over the land where the building is constructed; or, more generally, the holder of the Right to Build is not the owner of the land on which the building stands.

Based on Article 35 paragraph (3) of the Basic Agrarian Law (UUPA), the Right to Build may be transferred and assigned to another party through inheritance, which must be evidenced by the following::

- 1) A will or a certificate of inheritance issued by the authorized official;
- 2) A death certificate of the Holder of the Right to Build (Hak Guna Bangunan) issued by the authorized official;
- 3) Proof of identity of the heirs; and
- 4) The relevant Building Use Rights Certificate.

### d. Right of Use

Article 1 paragraph (1) of the Basic Agrarian Law (UUPA) states that Right of Use (Hak Pakai) is the right to use or to collect the yields from land directly controlled by the state or right of use, which is defined as: "The right to use and/or collect yields from land directly controlled by the state or land owned by another party, which grants authority and obligations as specified in the granting decision by the authorized official or in an agreement with the landowner, excluding lease agreements or land cultivation agreements, as long as it does not contradict the spirit of the provisions of this law." From the provisions of Article 41 UUPA, the characteristics of the Right of Use can be explained as follows:

- 1) The authority of the Right of Use holder over the land includes the right to utilize the land for the purpose of erecting buildings, as indicated by the phrase "using the land." It also includes the right to use the land for agricultural, fishery, livestock, and plantation purposes, as reflected in the phrase "collecting yields from the land."
- 2) The origin of the Right of Use land, in addition to land directly controlled by the State, can also occur on land with Ownership Rights;
- 3) The establishment of the Right of Use occurs as follows: for Hak Pakai on land directly controlled by the State, it is granted through a decision by an authorized official; whereas Hak Pakai on land with Ownership Rights arises through a land use agreement between the landowner and the holder of the Right of Use.
- 4) The Right of Use may be granted for a specified period or for as long as the land is used for a particular purpose.<sup>6</sup>

### e. Right of Management

Hak Pengelolaan is the right to control land directly controlled by the state, which grants the holder the authority to:

- 1) To plan the designation and use of the land.
- 2) To utilize the land for the purposes of carrying out its duties.
- 3) To transfer parts of the land to third parties with the right to use management (Hak Pakai Pengelolaan) for a period of 6 years.

- 4) To receive income and/or annual obligatory payments.

Management rights may be granted to government departments or agencies as well as legal entities appointed by the government. The procedures for granting management rights are regulated under Article 22 of the Basic Agrarian Law (UUPA).

f. Waqf land

Waqf land is the right of control over a specific plot of land (originally ownership rights which have first been converted into waqf status) that the owner has separated from their personal assets and dedicated permanently for religious purposes or other public interests such as Islamic boarding schools and educational institutions.

The land that can be endowed as waqf is limited to land with ownership rights (*hak milik*), which is a distinct land right characterized by its perpetual nature. If the land intended for waqf is not already under ownership rights, its status must first be elevated to ownership rights. Furthermore, the ownership land to be endowed as waqf must be free from any encumbrances, guarantees, seizures, or disputes.<sup>7</sup>

g. Ownership Rights to Apartment Units.

The definition of a condominium (or apartment building), as formulated in Article 1 number 1 of Law Number 20 Year 2011 concerning Condominiums, is: A building divided into parts that are functionally structured both horizontally and vertically, consisting of units that can each be separately owned and used, primarily as residential spaces, which are equipped with common areas, common objects, and shared land. A condominium may be constructed on land with ownership rights (*hak milik*), building use rights (*hak guna bangunan*), usage rights over state land (*hak pakai atas tanah negara*), or land management rights (*hak pengelolaan*), in accordance with the prevailing laws and regulations. In cases where the condominium is built on land with usage rights (*hak pakai*), ownership rights over state land for condominium development will be granted for a sufficiently long term to the owners of the condominium units, and this term may be extended.

Ownership rights over condominium units include:

- 1) Individual ownership rights over condominium units used separately;
- 2) Joint rights over parts of the condominium building;
- 3) Joint rights over common objects or assets;
- 4) Joint rights over the land, all of which constitute a single, functionally inseparable right.<sup>8</sup>

In order to provide legal certainty in the ownership of condominium units, the owner is granted a proof of ownership in the form of a Certificate of Ownership of Condominium Unit (*Sertipikat Hak Milik atas Satuan Rumah Susun*). The possession of such a certificate ensures stronger legal protection for the owner in carrying out any legal actions related to the unit.

h. Mortgage Right

According to Article 1 point 1 of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to the Land, a Mortgage Right (*Hak Tanggungan*) is a security right imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Agrarian Principles, with or without other objects that are integral to the land, for the repayment of a specific debt, which grants priority position to a particular creditor over other creditors.

Before the enactment of Law Number 4 of 1996, the encumbrance of land rights as debt collateral was conducted through the institution of *hypothec* (*hypothec*). After the

enactment of the Mortgage Law, the encumbrance of land rights as debt collateral is no longer conducted through \*hypotheek\* but instead through the Mortgage Right (Hak Tanggungan)<sup>9</sup>

Based on the provisions of Article 1 point 1 of the Mortgage Law (Undang-Undang Hak Tanggungan), in principle, a mortgage right (hak tanggungan) is a form of security for debt repayment that grants priority to the creditor, with the object of the security being land rights as regulated under the Basic Agrarian Law (UUPA).<sup>10</sup> Thus, it can be concluded that a mortgage right (hak tanggungan) is a form of proprietary security right over land rights for the repayment of a specific debt, which grants priority status to a particular creditor over other creditors. The security provided entails a preferential right or precedence for the mortgage holder over other creditors.

Objects (land) that will be used as collateral for a debt by being encumbered with a security right (Hak Tanggungan) must fulfill the following requirements:

- 1) Capable of being valued in monetary terms, as the debt guaranteed is in the form of money;
- 2) Registered as a public right, in order to fulfill the requirement of publicity;
- 3) Transferable in nature, so that if the debtor defaults (breaches the agreement), the collateral can be sold publicly, and
- 4) Specifically designated by statutory provisions.<sup>11</sup>

As evidence of the existence of a mortgage right (Hak Tanggungan), the National Land Agency (Badan Pertanahan Nasional) issues a Mortgage Certificate. In issuing the Mortgage Certificate, the reference point is the date of registration/recording in the land mortgage register. According to the Regulation of the State Minister for Agrarian Affairs/Head of the National Land Agency Number 3 of 1996, the Mortgage Certificate consists of a copy of the land mortgage register and a copy of the Deed of Granting Mortgage Right (hereinafter referred to as APHT), which has been prepared by the Head of the Land Office, and is bound in a document cover with a format specified by the regulation.

The mortgage certificate issued by the Land Office contains the legal subjects involved in the mortgage right, in connection with the mortgage deed agreement. In a mortgage agreement, there are two parties bound by the agreement: the mortgagor, who is the person or entity that pledges the object of the mortgage right, and the mortgagee, who is the person or entity that accepts the mortgage right as collateral for the debt provided..<sup>12</sup>

## 2.2 Land Registration and Registration System

Article 1 of Government Regulation Number 24 of 1997 concerning Land Registration states that: Land registration is a series of activities conducted by the government continuously, sustainably, and regularly, which includes the collection, processing, recording, presentation, and maintenance of physical and juridical data in the form of maps and registers regarding land parcels and condominium units, including the issuance of certificates as proof of rights for land parcels that already have rights and ownership rights over condominium units as well as certain encumbering rights.

The definition of land registration put forward by Boedi Harsono is not significantly different from the definition formulated in Article 1 of Government Regulation Number 24 of 1997 concerning Land Registration. In his book titled "Indonesian Agrarian Law," Boedi Harsono defines land registration as follows: Land registration is a series of activities conducted by the government continuously, sustainably, and regularly, which includes the collection, processing, recording, presentation, and maintenance of physical and juridical data in the form of maps and registers regarding land parcels and condominium units, including

the issuance of certificates as proof of rights for land parcels that already have rights, ownership rights over condominium units, and certain encumbering rights.<sup>13</sup>

Furthermore, the definition of land registration can be seen from the opinion expressed by Hadi Setia Tunggal, who states that land registration is “an administrative activity carried out concerning land, both in the transfer of rights and in the granting and recognition of new rights. This registration activity provides clarity regarding the status of the land.”<sup>14</sup>

Based on the definitions of land registration formulated in legislation and expressed by several experts as mentioned above, it can be concluded that land registration is a series of activities conducted continuously and systematically by the state/government. These activities involve the collection of specific information or data regarding certain lands within a particular area, aimed at processing, storing, and presenting land data for the benefit of the public. The purpose is to provide legal certainty in the field of land affairs by issuing land certificates as proof of ownership rights over the land.

The phrase “a series of activities” refers to various interconnected activities in the implementation of land registration, which are sequentially linked into a unified process that results in the availability of necessary data to provide legal certainty in the field of land affairs for the people. Meanwhile, the phrase “continuous” refers to the ongoing nature of these activities, meaning once initiated, they have no end. The data that has been collected and made available must always be maintained, in the sense that it is adjusted to subsequent changes, so that it remains consistent with the most current conditions.

The term “regular” indicates that all activities must be based on applicable laws and regulations, because the results will serve as legally valid evidence. However, the strength of this evidentiary value may vary among countries that implement land registration systems.

In Indonesia’s land registration system, the Basic Agrarian Law (UUPA) does not explicitly specify the type of system used. Based on Article 19 paragraph (2) of the UUPA, which states that land registration activities conclude with the issuance of a certificate of rights serving as strong proof, it indicates that a negative system is applied. However, it is not an absolute negative system because there is an active role played by land registration officials. It can be said that Indonesia implements a negative system with a positive tendency. Indonesia does not use a deed registration system, as evidenced by the existence of the land book as a document containing both juridical and physical data that is collected and presented, along with the issuance of certificates as proof of registered rights.

Land holds a religious significance for the Indonesian people, meaning that all land within the territory of the Republic of Indonesia is considered a gift from God Almighty. As a divine gift, land occupies a vital position in human life, serving as a fundamental source of prosperity. The presence of land in human life is crucial, whether as a place of residence, agriculture, business, or other uses.<sup>15</sup>

The relationship between humans and land in Indonesia acknowledges an eternal bond between the land and Indonesian citizens. This relationship is considered sacred, giving rise to a mystical connection between the land and its owners within the community. The eternal relationship between humans and land, as explained by Urip Santoso, is as follows: The connection between the Indonesian people and the land encompassing the earth, water, and Indonesian airspace is everlasting. This means that as long as the Indonesian people, united as one nation, exist, and as long as the earth, water, and airspace of Indonesia remain, no authority can define or nullify this relationship under any circumstances.

The immense importance of land in human life has caused the demand for land to continuously increase. This is due to a relatively high population growth rate, while the

available land area is gradually shrinking because of its fixed and limited nature. As the demand for land grows, the control or ownership of land is increasingly reinforced through various legal efforts necessary to maintain the sustainability and tranquility of land ownership.<sup>16</sup> The government's effort to establish order in the field of land affairs is carried out by enacting national land law regulations, namely through the issuance of Law No. 5 of 1960 concerning Basic Agrarian Principles (hereinafter referred to as the UUPA)

### **3. Proposed Method**

#### **3.1. Type of Research**

This study employs normative juridical research (legal research), which is legal research based on the prevailing legislation and can also be referred to as doctrinal legal research. In this type of research, law is often conceptualized as what is written in the statutory regulations (law in books) or as legal rules or norms that serve as standards for society's behavior regarding what is deemed appropriate.<sup>17</sup>

#### **3.2. Pendekatan Masalah**

In practical application, this approach provides an opportunity to study the consistency and conformity between laws and the Constitution or among regulations. The conceptual approach is based on prevailing views and doctrines within legal science. Through this approach, the research will uncover ideas that give rise to legal definitions, legal concepts, and legal principles relevant to the existing legal issues.<sup>18</sup> In practical terms, this approach provides an opportunity to examine the consistency and alignment between statutory laws and the Constitution or among various regulations. The conceptual approach is based on the views and doctrines that have developed within legal scholarship. Through this approach, the research will uncover ideas that generate legal definitions, legal concepts, and legal principles relevant to the existing legal issues.<sup>19</sup>

#### **3.3 Sources of Legal Materials**

The legal materials used consist of primary legal materials as follows:

1. The 1945 Constitution of the Republic of Indonesia;
2. Law Number 5 of 1960 concerning the Basic Agrarian Principles;
3. Government Regulation Number 10 of 1961 concerning Land Registration;
4. Government Regulation Number 24 of 1997 concerning Land Registration;
5. Government Regulation Number 18 of 2021 concerning the Right of Management, Land Rights, Strata Title Units, and Land Registration;
6. Minister of Agrarian Affairs Regulation Number 35 of 2016 concerning the Acceleration of the Implementation of Complete Systematic Land Registration;

Secondary legal materials are also used, which consist of all publications related to law. These legal publications include textbooks, legal dictionaries, and legal journals.

#### **3.4 Legal Materials Collection Techniques**

The technique for collecting legal materials involves gathering, classifying, and elaborating on the materials. The collection process is carried out by exploring the normative framework using legal materials that discuss legal theories and law enforcement. Both primary and secondary legal materials are collected based on the formulated research topics, classified according to their sources, and comprehensively reviewed. The legal materials obtained

through the literature study are then described and interconnected in such a way that they can be systematically presented in writing to achieve the desired objective of providing answers to the identified legal issues.<sup>20</sup>

### **3.5 Techniques for Processing Legal Materials**

Data processing in this research involves examining the systematic arrangement of legislation by collecting regulations in specific fields or related areas that are the focus of the study, followed by conducting an analysis. The processing of legal materials in this thesis proposal is carried out using two techniques for collecting legal materials. These two techniques are: (1) literature and legal material tracing, and (2) tracing legal documents concerning the shift in the principle of contradictory delimitation of land boundaries resulting from measurements under the Complete Systematic Land Registration Program (PTSL).

### **3.6 Legal Material Analysis**

The analysis of legal materials in this thesis proposal involves collecting both primary and secondary legal materials and broadly analyzing them using qualitative analysis methods. The qualitative method is a type of writing methodology characterized by differences from quantitative writing.<sup>21</sup> This writing is also analyzed using the deductive method, which involves analyzing from general conclusions or generalizations that are then elaborated into concrete examples or facts to explain those conclusions or generalizations; in other words, it is an analysis from the general to the specific. Additionally, it is analyzed prescriptively, meaning it examines or analyzes a legal issue based on the applicable official regulations or provisions.<sup>22</sup>

## **4. Results and Discussion**

### **4.1. Legal Consequences If the Contradictory Delimitation of Land Boundaries Resulting from the Complete Systematic Land Registration (PTSL) Measurement Program Does Not Function**

The policy for accelerating the implementation of the Complete Systematic Land Registration (PTSL) carried out by the government is based on the Minister of Agrarian Affairs Regulation No. 1 of 2017. The PTSL activity is generally a mass land registration process conducted simultaneously, covering all land registration objects that have not yet been registered within a village/urban village or an equivalent administrative area. This effort aims to provide legal certainty and protection of land rights to the public in a fair and equitable manner. The government's approach is considered appropriate in fulfilling the public's right to legal certainty regarding land ownership. This is demonstrated by the seriousness of the central government, which is positively welcomed by regional governments as implementers, guided by a unified procedure outlined in the technical guidelines for accelerating the implementation of systematic land registration.

In order to achieve the target of completing land registration throughout the Republic of Indonesia, support from various parties is required. In 2017, the President of Indonesia instructed the Minister of Agrarian Affairs and Spatial Planning/National Land Agency to conduct a large-scale land certification program for rural communities. Since then, the target for land certification has increased significantly. The breakthrough made by the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency to meet this target is through

a program called the Complete Systematic Land Registration (PTSL). Through this program, the government is committed to completing the mapping, registration, and certification of land across the entire territory of the Republic of Indonesia by 2025.

Essentially, landowners require legal protection that serves as strong evidence and a juridical basis for their ownership. The policy of the Complete Systematic Land Registration (PTSL) program, as stipulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 1 of 2017, amending Regulation Number 35 of 2016 concerning the Acceleration of Complete Systematic Land Registration Implementation, guarantees that landowners are provided legal certainty over their land parcels through the issuance of land certificates to be owned by the community.<sup>23</sup>

This policy also regulates the data collection of all land registration objects throughout the territory of the Republic of Indonesia within a single village/sub-district or an equivalent administrative unit, which includes the gathering and verification of physical and juridical data regarding one or several land registration objects for registration purposes. The interests of the community holding land rights, or the target group, are explicitly stated in this policy.

In any policy, there are certainly expected benefits to be achieved, both general and specific objectives, as well as benefits for regulators, implementers, and the community who are the objects or target groups of the policy.<sup>24</sup>

This indicator refers to a concept that illustrates or explains that a policy must include several types of benefits, which demonstrate the output or impact resulting from the implementation of the policy to be carried out. In the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 1 of 2017 concerning the Acceleration of the Implementation of Complete Systematic Land Registration (PTSL), it is explained that the benefits of implementing this land registration program are to provide legal certainty and legal protection of community land rights fairly and equitably, as well as to encourage the growth of the national economy in general and the people's economy in particular. Therefore, acceleration of complete land registration throughout the territory of the Republic of Indonesia is necessary as mandated in Article 19 of Law Number 5 of 1960 concerning the Basic Agrarian Principles. In the implementation of the policy within the target group, the National Land Agency states the benefits that will be received by the community through the implementation of this policy..

To all members of the public who own land parcels, we from the National Land Agency, as the implementing institution of this policy, will conduct data collection that includes Physical Data or information regarding the location, boundaries, and area of the land parcels, as well as information about any buildings or parts of buildings on them. Juridical Data refers to data containing information about the legal status or ownership status of the registered land parcels, the rights holders or controlling parties, and any other rights or encumbrances burdening the land..

The desired change from the policy of accelerating the Complete Systematic Land Registration (PTSJ) refers to an indicator that denotes a standard or measure expressed on a clear scale regarding the objectives to be achieved through the implementation of the policy.

A policy is expected to provide sustainable benefits. Good implementation will produce positive outputs both in the short term and the long term, continuously and systematically. The policy on Complete Systematic Land Registration (PTSJ) aims for a transformation, namely the registration of all land parcels across Indonesia. Through the PTSJ program, the government sets a target of change that goes beyond merely issuing land certificates to landowners; this policy also offers a national solution.

The implementer or executor of the Complete Systematic Land Registration (PTSJ) acceleration policy is crucial, as the success of a policy becomes evident when there is a competent and capable institution effectively carrying out the policy or program. Successful implementation must be supported by skilled execution to ensure the policy's success. Furthermore, it is essential that the policy clearly specifies and documents the implementer in detail.

In the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 1 of 2017 concerning the Acceleration of Complete Systematic Land Registration (PTSJ), Article 1, Clause 20, it is explained that the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, hereinafter referred to as the Ministry, is the ministry that organizes governmental affairs in the field of agrarian/land and spatial planning. Furthermore, Article 1, Clause 22 clearly specifies the implementer, namely the Regional Office of the National Land Agency, hereinafter referred to as the Regional BPN Office, which is a vertical agency of the National Land Agency at the provincial level, directly subordinate and responsible to the Minister.

The process of policy implementation not only involves the behavior of the administrative bodies responsible for executing the program and ensuring compliance by the target groups, but also encompasses a network of political, economic, and social forces that directly influence the behavior of all parties involved, ultimately affecting the policy's objectives, whether positively or negatively. The entirety of the implementors mentioned in the information above reflects the assertion that the existence of the Complete Systematic Land Registration policy is supported by adequate implementing personnel, who are clearly identified.

The policy implementation model considers that the success of implementation is evaluated from two aspects, namely the Content of Policy and the Context of Policy. The indicators for assessing the success of a policy from the content side are: (1) the extent to which the interests of the target groups are incorporated into the policy content; (2) the types of benefits received by the target groups; (3) the degree of desired change resulting from the policy; (4) whether the placement of the program is appropriate; (5) whether the policy clearly specifies its implementors; and (6) whether the program is supported by adequate resources. Meanwhile, indicators of the policy context are viewed from: (1) the magnitude of power, interests, and strategies held by the actors involved in policy implementation; (2)

the characteristics of the institution and the ruling regime; and (3) the level of compliance and responsiveness of the target groups.<sup>25</sup>

In order to guarantee legal certainty, the government conducts land registration throughout the territory of the Republic of Indonesia. The purpose of this land registration is to provide legal certainty and legal protection to holders of land rights. This is because the result of the land registration activity is the issuance of proof of ownership of land rights. This proof of ownership can be used to establish the holder's legitimate claim to the respective rights.

The government's efforts to implement land registration throughout Indonesia continue to progress, accompanied by improvements and refinements to existing regulations. This is evident in the issuance, within the same year, of a regulation concerning the Acceleration of Complete Systematic Land Registration, namely the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 35 of 2016.

In order to realize land registration throughout the entire territory of Indonesia, although supported by the issuance of regulations governing land registration and the acceleration of registration conducted systematically referred to as Complete Systematic Land Registration (PTSL) obstacles and challenges still may arise. These challenges represent a distinct hurdle in fulfilling the mandate contained in Article 19 paragraph (1) of the Basic Agrarian Law (UUPA).

One of the reasons for the establishment of the Complete Systematic Land Registration (PTSL) program is to accelerate land registration, so that lands within Indonesia can be registered promptly. In its implementation, PTSL requires a significant role not only from the appointed committee originating from the land office but also from village officials and the community itself. The community can collaborate and support the ongoing PTSL activities in their respective areas..

The Legal Consequences if the Contradictory Delimitation of Land Boundaries Resulting from the Measurement in the Complete Systematic Land Registration (PTSL) Program Fails will cause discrepancies between data collection and the implementation of the PTSL. Identification and inventory of absentee land, excess maximum land, and abandoned land should also be conducted as mandated by the Instruction of the Minister of State for Agrarian Affairs/Head of the National Land Agency No. 2 of 1995 concerning the Inventory of Abandoned Land, Excess Maximum Land, and New Absentee Land. This identification and inventory serve as initial data to regulate these lands in accordance with the prevailing laws and regulations, at least to organize absentee land, excess maximum land, and abandoned land..

On the other hand, absentee land and abandoned land can hinder the measurement of land parcels because most of these lands are held as investments and the rights holders do not reside in the area of their land. Therefore, identification, inventory, and regulation are necessary. However, the regulation process is not an easy task, as it requires significant costs. For this reason, the government must take an active role in carrying out regulation and supervision to realize orderly land administration, reduce disparities in land control and ownership, and even diminish land disputes.

An activity in the placement of land parcel boundaries based on the agreement of the interested parties in land registration is called the principle of *Contradictoire Delimitatie*. *Contradictoire delimitatie* is a norm applied in land registration that obliges land rights holders to pay attention to the placement, determination, and maintenance of land boundaries based on the agreement and consent of the parties concerned, in this case, the owners of land adjoining their own. If the adjoining landowners fail to reach an agreement on the actual location of a boundary despite mediation efforts, then the boundary determination is decided by a court ruling (Articles 17, 18, 19 of Government Regulation No. 24 Year 1997). Therefore, the agreement/consent and the presence of adjoining landowners are mandatory in land registration.

The implementation of the principle of *Contradictory Delimitation* runs smoothly when all concerned parties are present and give their consent to the boundary determination. However, in reality, the implementation of this principle faces difficulties in the field, both during routine land registration and within the Complete Systematic Land Registration (PTSL) program. Several factors hinder the effective application of the principle of *contradictory delimitation*, including: First, land rights holders fail to maintain the boundary markers, which is their obligation, resulting in overlapping boundaries due to unclear land parcels or missing boundary markers and a general lack of public awareness to preserve these markers; Second, parties do not attend the boundary determination due to landowners' busy schedules or difficulty in locating absentee landowners; Third, boundary disputes arise, such as family or neighbor conflicts and disputes already settled in court. These problems become significant obstacles in the measurement process.

Socialization in the form of public outreach regarding the importance of placing, determining, and maintaining land boundaries during the measurement process is the obligation of landowners, not the authority of the surveyors. The authority of surveyors is limited to measuring boundary markers that have already been installed by the rights holders and adjacent landowners, not to install boundary markers themselves. It is the landowners' responsibility to maintain boundary markers, such as stakes, which serve as the land boundaries and are not installed or owned by the National Land Agency (BPN). Likewise, the meaning of attendance and agreement in determining land boundaries must be clearly understood. In this context, there is a need for community outreach regarding the implementation of the principle of *contradictory delimitation*. To address this issue, the idea of organizing a mass movement for installing boundary markers at the locations to be determined is proposed, with participation from all landowners who install their respective boundary markers. The boundary markers would be prepared by community groups assigned for this task, such as youth organizations (*karang taruna*), following directives from the local land office.

The certainty of the location and boundaries of each land parcel cannot be overlooked, as in reality, many land disputes arise due to inaccurate boundaries and locations of land parcels. Furthermore, a significant number of boundary disputes have escalated to the courts. Various regulations have been formulated and refined in the implementation of the Complete Systematic Land Registration Program (PTSL) to provide legal certainty and protection, as well as to reduce disputes. However, in practice, there are still obstacles that

have the potential to become problems in the future, including issues related to land taxes (outstanding income tax and acquisition fees), human resources, facilities and infrastructure, absentee land, excessive land ownership, and neglected land, problems with the announcement of physical and juridical data, the application of the principle of contradictory delimitation, and the proof of rights.

These problems have the potential to cause disputes, one of which stems from the position of the Minister of Agrarian Affairs/Head of National Land Agency Regulation No. 6 of 2018. When reviewed under the theory of the hierarchy of legislation, this regulation holds a lower rank compared to the regulations governing the issues described above. On the other hand, the contents of Ministerial Regulation No. 6 of 2018 conflict with higher-level regulations. For example, provisions regarding land taxes (Income Tax and Land and Building Acquisition Duty) are regulated under laws and their implementing regulations, and even conflict with regional regulations. Furthermore, the issue of announcing physical and juridical data conflicts with Government Regulation No. 24 of 1997, which stipulates a 30-day announcement period, whereas the ministerial regulation mandates only 14 days. Additionally, the matter of Physical Control Statement Letters over land parcels is already regulated in some regions through regional regulations.

An alternative solution to address the legal and implementation issues is to strengthen the legal basis for the implementation of the Complete Systematic Land Registration (PTSL) through a Government Regulation (PP), by revising or replacing Government Regulation No. 24 of 1997 concerning Land Registration and/or regulating the implementation of PTSL separately in a Government Regulation. This would elevate the legal status of PTSL implementation above that of Ministerial Regulations. This approach aligns with several principles of legislation: First, the principle of *Lex Specialis Derogat Legi Generali*, which means that a specific regulation can override a general regulation, while the provisions of the general legal rules remain applicable except as specifically regulated by the special legal rules. For example, the regulation of Income Tax (PPh) and Land and Building Acquisition Duty (BPHTB) has its own distinct legal regime; thus, the implementation of PTSL concerning PPh and BPHTB can apply the *Lex Specialis* principle if the PTSL regulation is formulated in the form of a Government Regulation. Second, the principle of *Lex Superior Derogat Legi Inferior* means that a higher-level regulation overrides a lower-level regulation. This is also related to the existence of Regional Regulations (Perda), which often become subject to debate when juxtaposed with Ministerial Regulations. However, if the implementation of PTSL is regulated by a Government Regulation, the Regional Regulations may be set aside accordingly.

**Legal Consequences If the Contradictory Delimitation of Land Boundaries Resulting from the Complete Systematic Land Registration (PTSL) Program Does Not Function.** Based on legal theory, the purpose of law is to maintain and guarantee order (certainty) and discipline. Without order and discipline, a reasonable human life is impossible; individuals cannot develop their potential without certainty and order.

If viewed from an abstract or formal legal perspective, this is indeed correct. In the determination of land boundaries for parcels that are already owned under a right that has not yet been registered, or that have been registered but lack an official measurement letter

or situational map or where the existing measurement letter or map no longer corresponds to the actual condition the Complete Systematic Land Registration Committee conducts the boundary determination during land registration. This process is based on the boundary designation by the relevant land rights holder and, as much as possible, is approved by the neighboring land rights holders.

Based on the research results regarding the implementation of the principle of contradictory delimitation in the execution of complete systematic land registration as regulated in Government Regulation (PP) Number 24 of 1997, this principle obliges land rights holders to pay attention to the placement, determination, and maintenance of land boundaries based on the agreement of the interested parties, namely the neighboring landowners. This principle, known as the Principle of Contradictory Delimitation (*Contradictoire Delimitatie*), serves as an initial step to prevent land disputes in the land registration process itself.

Furthermore, during each boundary determination in the field, the landowner and the owners of the adjoining lands should be present. However, there are times when the neighboring landowners cannot attend because they live out of town or even abroad. The landowner is unable to contact the neighboring parties, while the village officials do not have precise knowledge of the boundary either. This situation also hinders the implementation of the Principle of Contradictory Delimitation. Another issue that arises during boundary determination, before the measurement is conducted, is the mandatory fulfillment of the Contradictory Delimitation principle; without this, the continuation of the land registration process would be futile.

Measurement cannot be carried out, nor can the creation of maps and land records, let alone the issuance of certificates of title. Although land ownership has been regulated in such a manner, problems still arise in the field, such as overlapping land boundaries due to the unclear demarcation of parcels. This often occurs because landowners fail to properly maintain the boundaries of their respective plots..

One crucial aspect to consider in the implementation of land registration is the land measurement process. Prior to the commencement of measurement, it must be ensured that boundary markers or stakes have been installed at every corner of the land parcel to be measured. Landowners are obligated to install and maintain these boundary markers, as stipulated in Article 17 of Government Regulation No. 24 of 1997 concerning Land Registration. This obligation is intended to prevent potential disputes or conflicts over land boundaries with neighboring landowners in the future. The boundary determination must be carried out by the landowner and the adjacent landowners in a contradictory manner, commonly referred to as the principle of *Contradictoire Delimitatie*.

This *contradictoire* principle can be proven by the signing of a Statement Letter (*Surat Pernyataan*) by the landowner and the adjacent landowners to the north, east, south, and west, as well as by the Head of the Village or Sub-District (*Kepala Desa/Kelurahan*). At the same time, this *contradictoire* agreement is also recorded in Form 201 (*Daftar Isian 201*) provided by the Land Office (*Kantor Pertanahan*). Both of these written documents serve as prerequisites for submitting a request for land measurement or boundary determination to the Land Office. Furthermore, the Land Office will not accept any measurement request

unless the installed boundary markers fulfill the *contradictoire* principle, such as stakes made of iron pipe, PVC pipe, wood, concrete monuments, or wall structures..

Articles 14 to 19 of Government Regulation Number 24 of 1997, as an improvement to Government Regulation Number 10 of 1961, state that in order to provide legal certainty and protection to rights holders, the legal certainty of the object must first be established through the determination of land parcel boundaries. The determination of physical data or land ownership boundaries is regulated in Article 17 of Government Regulation No. 24 of 1997 and must be based on the mutual agreement of the relevant parties. If no agreement is reached during the measurement process regarding the land boundaries, the surveyor shall mark the disputed boundary with black ink in the form of a dashed line, which may later be amended if an agreement is reached within a specified period.

Once the *contradictoire* principle has been fulfilled and an agreement has been reached by the adjacent landowners, the next stage is the measurement process conducted by surveyors from the Land Office. However, if a measurement is required at the time of boundary marker installation, such measurement is not carried out by the Land Office surveyors, but by the landowner themselves. All boundary location measurement data recorded in the field and documented in the Survey Map (*Gambar Ukur*) must be properly archived at the Land Office as long as the land parcel exists. This data may later be used to reconstruct the land parcel boundaries in case they are lost.

The landowner and adjacent landowners who are present to witness the measurement must sign the Survey Map (*Gambar Ukur*), making a statement that the boundary markers at the time of measurement or boundary determination have not changed from those indicated in the previous *contradictoire* statement. As the *Contradictoire Delimitatie* principle constitutes the initial stage in the measurement process, each landowner must first install boundary markers or indicators on their land in accordance with the agreement of the directly adjacent landowners namely, those to the west, north, east, and south. These boundary markers must meet the requirements as stipulated in Article 21 of the Regulation of the Minister of Agrarian Affairs of the Republic of Indonesia Number 3 of 1997, which states: “Boundary markers shall be installed at each corner of the land parcel boundary, and, if deemed necessary by the official conducting the measurement, also at specific points along the boundary line of the land parcel..”

Based on the aforementioned explanation, the purpose of law is essentially to provide a means created by authorized officials (the legislature) to enact regulations that ensure utility, justice, and legal certainty for society. In this context, the purpose of law offers protection to legal subjects through legal instruments, both preventive and repressive, whether written or unwritten. In other words, legal protection reflects the function of law as a concept that can provide justice, order, certainty, benefit, and peace.

In the context of the legal consequences that may arise if the *Contradictoire Delimitatie* principle is not properly applied in the boundary determination resulting from the Land Registration Program (PTSL), its non-functioning may obstruct the implementation of the principle. Another issue that often arises during boundary determination—prior to the actual land measurement—is the failure to fulfill the requirements of the *Contradictoire Delimitatie* principle. If this principle is not fulfilled, the continuation of the land registration process

will be futile. Measurement cannot be carried out, nor can mapping or land recording, and the issuance of certificates of land rights would not be permitted.

Although land ownership issues have been regulated comprehensively, problems still occur in practice, such as overlapping boundaries between land parcels, due to unclear boundaries caused by landowners' failure to maintain their land boundary markers properly.

## 5. Conclusions

The legal consequence arising if the *Contradictoire Delimitatie* principle in the boundary determination of land measurements under the Complete Systematic Land Registration Program (PTSL) fails to function is the obstruction of the application of this principle. Consequently, the continuation of the land registration process will be futile, leading to uncertainty regarding land boundaries, which hampers the smooth execution of land measurement, mapping, and land recording processes. Furthermore, the issuance of land ownership certificates will certainly be prohibited.

The policy for accelerating the implementation of PTSL is a strategic government measure to guarantee legal certainty and protection of land rights for the community fairly and equitably. Through regulations such as the Minister of Agrarian Affairs/National Land Agency Regulation No. 1 of 2017 and Government Regulation No. 24 of 1997, this program aims to comprehensively and simultaneously register all land parcels across Indonesia, involving various stakeholders including the community, village apparatus, and land institutions.

One crucial principle in the implementation of PTSL is the *Contradictoire Delimitatie* principle, which obliges landowners and adjoining parties to be present and to agree in writing on the land boundary delineation. The absence of this principle disrupts the measurement process, map creation, and issuance of certificates of rights, and creates potential disputes such as overlapping boundaries. Therefore, the success of PTSL heavily depends on the proper application of the *Contradictoire Delimitatie* principle, synergy among stakeholders, and stronger hierarchical regulatory improvements to ensure the achievement of legal objectives including justice, certainty, and benefit for society..

**Conflicts of Interest:** The authors declare no conflict of interest. The funders had no role in the design of the study; in the collection, analysis, or interpretation of data; in the writing of the manuscript; or in the decision to publish the results.

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