

THE EXISTENCE OF GIRIK AS EVIDENCE OF OWNERSHIP BASED ON POSITIVE LAW IN INDONESIA

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Abstract

Every individual has the right to have private property rights where these property rights cannot be taken arbitrarily by anyone. Looking at a historical overview before the UUPA was born, with regard to agrarian regulations in Indonesia there is still a dualism of regulations that apply. As we know, the term girik is often heard in the land sector. Girik is a letter for a land including related to land tenure from generation to generation or custom. Girik land is generally inherited or from his family. Thus it can be said that in general, girik land does not have an official certificate. Of course, the unofficial nature of the certificate will create the potential for problems to occur in the future. This research uses the type of research used is normative juridical. This research is a legal research conducted by examining literature which is referred to as secondary data. The formulation of the problem included in this research is related to how is the existence of girik certificates as proof of ownership of land based on agrarian law in Indonesia? and how to change the status of girik land into a certificate of ownership in Indonesia? So the results of the study stated that the UUPA does not recognize girik as proof of ownership of a land. This was confirmed in the Decision of the Supreme Court of the Republic of Indonesia. No. 34/K/Sip/1960, dated February 19, 1960, it was also emphasized that a petuk/girik letter was not proof of land rights. Just as a starting point.

Keywords: *Existence, Girik, Agrarian*

INTRODUCTION

Article 1, paragraph 3 of the 1945 Constitution of the Republic of Indonesia states that "Indonesia is a state based on the rule of law." This implies that all matters must adhere to applicable legal regulations, including land ownership. In Indonesia, land is governed by Law Number 5 of 1960 concerning the Basic Agrarian Principles. The Basic Agrarian Law (Undang-Undang Pokok Agraria or UUPA) regulates land rights, water, and airspace. This law is an implementation of Article 33, paragraph 3 of the Constitution, which states that "the land, water, and natural resources contained therein shall be controlled by the state and utilized for the greatest welfare of the

people." Consequently, the existence of the UUPA serves to clarify land regulations in Indonesia.

Looking at the historical background before the enactment of the UUPA, agrarian regulations in Indonesia were characterized by a dualism of legal systems.¹ The prevailing dualism at that time was highly detrimental to the indigenous people, as land under customary rights was governed by unwritten customary law. In contrast, land with Western rights was regulated by written Western law, creating legal inequality and uncertainty for indigenous landowners.² However, after the enactment of the UUPA, the issuance of land rights subject to either Western law or local customary law was no longer permitted, except when explicitly recognized as customary rights.

In the field of land affairs, the term girik is often heard. Girik refers to a document related to a plot of land, particularly concerning land possession that has been passed down through generations or governed by customary law. Additionally, girik serves as preliminary evidence of land ownership, specifically for land that falls under customary law. Girik land is typically inherited or acquired through family lineage, which means it generally lacks an official land certificate. The absence of an official certificate poses the risk of future legal disputes.

As the current UUPA does not recognize any proof of ownership other than a certified land title, girik cannot be equated with an official land certificate. Based on this, it is essential to examine the existence of girik as evidence of ownership within Indonesia's agrarian legal framework.

RESEARCH PROBLEM

Based on the background description, the research problems can be formulated as follows:

¹ Desy Nurkristia, "Asas Kepastian Dalam Kedudukan Girik Terhadap Sertipikat Hak Atas Tanah", *Jurnal Suara Hukum*, Vol.3/2/2021, hlm.252.

² *Ibid.*

1. How does girik exist as evidence of land ownership under Indonesia's agrarian law?
2. How can girik land be converted into certified land in Indonesia?

RESEARCH METHODE

This study employs a normative juridical research method. This legal research is conducted by examining library materials, which are referred to as secondary data. The purpose of this study is to analyze the existence of girik certificates as proof of land ownership.

The research data is sourced from secondary data, which consists of primary, secondary, and tertiary legal materials. Primary legal materials serve as the main reference for addressing the research problem. These primary materials are supported by secondary legal materials, which provide additional explanations and interpretations of the primary legal sources.³ Secondary legal materials in this study include journals, articles, research findings, and other relevant sources related to the topic. Primary and secondary legal materials will be further clarified with tertiary legal materials, such as magazines, online data, and other supporting references.

RESULT AND DISCUSSION

The Existence of Girik as Evidence of Land Ownership Under Agrarian Law in Indonesia

As stipulated in Article 34, paragraph (1) of the 1945 Constitution, every individual has the right to private ownership, which cannot be arbitrarily taken by anyone. This provision also applies to land ownership, which is a fundamental right of every individual without exception. In ensuring land ownership, the state guarantees every citizen the right to private property, including the ownership of land.⁴ Article 2

³ Kornelius Benuf & Muhamad Azhar, "Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Jurnal Gema Keadilan*, Vol.7/No.1/2020, hlm. 26.

⁴ Abdul Jabar, "Kekuatan Hukum Surat Girik Terhadap Penguasaan Hak Atas Tanah Dalam Hukum Agraria Nasional", *Al Ahwal*, Vol. 10/01/2018. Hlm. 131.

of the Basic Agrarian Law (Undang-Undang Pokok Agraria or UUPA) affirms that land, water, airspace, and the natural resources contained within them are ultimately controlled by the state.⁵ As a consequence of the state's recognition of land ownership rights by individuals or legal entities, the state is obligated to provide legal certainty regarding land rights. This ensures that every individual or legal entity holding such rights can defend their ownership. One of the key measures to guarantee legal certainty for landowners is the registration of land. Once the land is registered, a Land Ownership Certificate (Sertifikat Hak Milik) is issued as official proof of ownership.

A certificate serves as evidence of land or property ownership. As stipulated in Article 1, point 20 of Government Regulation Number 24 of 1997, a certificate is defined as proof of rights, in accordance with Article 19, paragraph (2), letter (c) of the Basic Agrarian Law (UUPA). This provision states that for land rights, management rights, waqf land, ownership rights over condominium units, and security rights that have been recorded in the land register, the certificate acts as a valid document and serves as strong legal evidence.⁶

In everyday life, various forms of ownership evidence exist aside from certificates, one of which is girik. Girik is a document related to land tax payments, commonly used in rural areas. Before the enactment of the Basic Agrarian Law (Undang-Undang Pokok Agraria or UUPA), land records were maintained to identify plots of land or yards, including trees allocated to specific individuals, along with the names of their respective owners.

Before the introduction of the UUPA, girik was still recognized as proof of land ownership. However, following the enactment of the UUPA and Government Regulation No. 24 of 1997 on Land Registration, only land certificates (sertifikat tanah) are officially recognized as valid proof of land ownership.⁷ Ownership of land through

⁵ *Ibid.*

⁶ Adrian Sutedi, *Sertifikat Hak Atas Tanah*, 2012, Sinar Grafika, Jakarta Timur, hlm. 86.

⁷ Desy Nurkristia, *Op.Cit.*, Hlm. 60.

girik is often the result of inheritance passed down from generation to generation, although some individuals acquire it through buying and selling transactions. Girik can be used for paying Land and Building Tax (Pajak Bumi dan Bangunan or PBB); however, it does not have full legal force as proof of ownership. As a result, the UUPA does not recognize girik as valid evidence of land ownership.⁸ Nevertheless, the perception that girik serves as proof of land ownership continues to persist and remains widely accepted in society. Many people feel secure in their ownership rights simply because they possess a girik document.

Although girik does not hold legal force as definitive proof of land ownership in court, it can serve as preliminary evidence that must be supported by additional proof. Such supporting evidence includes continuous land possession for over 20 years and the presence of documents such as Petok D, Girik, Pipil, Ketitir, Verponding Indonesia, or similar records. Other supporting documents may include privately executed transfer deeds witnessed by the village head or customary leader, transfer deeds made by a Land Deed Official (PPAT) for unregistered land along with its legal basis, akta ikrar wakaf (waqf pledge deed) or surat ikrar wakaf (waqf declaration letter) accompanied by the legal basis of the waqf land, auction records, land replacement purchase letters issued by the government, and land history certificates issued by the Land and Building Tax (PBB) office, provided they are supported by a valid legal basis.

Conversion and Registration of Girik Land Status into Certified Land

In the context of initial land registration or the issuance of a Land Ownership Certificate (Sertifikat Hak Milik), land originating from customary land titles such as girik can undergo certification through either a Systematic or Sporadic approach. The procedure for this process is carried out through Recognition or Confirmation of Rights, as regulated under Minister of Agrarian Affairs/Head of the National Land

⁸ Johannes Mangapul Turnip dan Alex Rudianto Simanjuntak, “Keabsahan Surat Tanah Tahun 1923 (Tanah Girik) Dalam Hal Penguasaan Tanah Sebelum Lahirnya UUPA”, *Jurnal Darma Agung*, Vol. 30/2/2022. Hlm.401.

Agency Regulation Number 3 of 1997 concerning the Implementation of Government Regulation Number 24 of 1997 on Land Registration.

Furthermore, Article 9, paragraph (2), point 2, letter (a) of Ministerial Regulation Number 9 of 1999 explicitly states that one of the requirements for processing an application for land ownership rights is the submission of legal grounds as proof of possession. These legal grounds may include certificates, girik, plot allocation letters, documents proving the release of rights and full payment for land and housing purchased from the government, court rulings, PPAT deeds, deeds of release of rights, and other documents evidencing land acquisition.⁹ In the issuance of a land certificate, the process involves the applicant, the landowner, and relevant institutions as the legal basis for the rights associated with the certificate application. However, statements provided by applicants or related parties carry the potential risk of forgery, expiration, or even falsification. These issues may result in legal defects in the issued certificate, leading to disputes and uncertainty in land ownership rights.¹⁰

Since the enactment of the UUPA, the government has encouraged the public to convert or legalize land with old rights or uncertified land such as girik into officially certified land ownership. In the land registration process, several key elements must be considered, including:¹¹

- a. A series of activities to collect both physical and legal data related to the land.
- b. A designated competent authority, namely the Ministry of Agrarian Affairs and Spatial Planning, which has the authority to oversee the registration process.

⁹ H. Masnadi, *Op.Cit.*, Hlm. 33.

¹⁰ Ali Achmmad Chomzah, *Hukum Pertanahan Seri Hukum Pertanahan III-Penyelesaian Sengketa Hak Atas Tanah dan Seri Hukum Pertanahan IV-Pengadaan Tanah Instansi Pemerintah*, Jakarta: Prestasi Pustaka, 2003, Hlm. 18.

¹¹Suhadi dan Rofi Wahasisa, *Buku Ajar Pendaftaran Tanah*, Semarang: UNS, 2008, Hlm. 12.

- c. A systematic and continuous process, ensuring that land registration follows legal regulations and remains ongoing beyond the issuance of ownership proof.
- d. Land data collection, which includes both physical data (such as location, boundaries, land area, buildings, and plants on the land) and legal data (such as the type of land rights and the rightful owner).
- e. A unified registration area, where the object of land registration falls within a specific jurisdiction.
- f. Specific land categories, where only certain lands qualify for registration.
- g. Official proof of ownership, which is formalized through the issuance of a land certificate.

The procedure for converting girik land into officially certified land consists of two stages. First Stage: Administrative Process at the Village Office, at this stage, the landowner must prepare several documents, including a Certificate of Non-Dispute (Surat Keterangan Tidak Sengketa). This certificate serves as official confirmation that the applicant is the rightful owner of the land and that no other party can claim ownership. If the land is proven to be free of disputes, the Village Head (Kepala Desa) or Subdistrict Head (Lurah) will sign the necessary documents to proceed with the certification process. However, if a dispute is identified, all involved parties must resolve the conflict and reach a mutual agreement before the Village Head or Lurah can authorize the application.¹² Next, the applicant must prepare a Land History Certificate (Surat Keterangan Riwayat Tanah), which contains details about the land's ownership history, starting from the original owner to the current heir. Additionally, the applicant must obtain a Certificate of Sporadic Land Ownership (Surat Keterangan Penguasaan Tanah Secara Sporadik), which serves as official confirmation that the applicant legally owns the girik land in question. This document must include the date

¹² Charren Hendrik, "Punya Tanah Girik? Ini Cara Mengubahnya Menjadi Resmi", <https://perqara.com/blog/cara-mengubah-tanah-girik-menjadi-resmi/>, diakses pada 5 Maret 2023.

the land was acquired and the method of acquisition, ensuring clarity and legitimacy in the ownership claim.¹³

The next stage is processing at the Land Office (Kantor Pertanahan). In this stage, the applicant must submit a formal request for land certification, accompanied by several required documents. These include the original girik document or a photocopy of Letter C (Letter C Desa), along with three original certificates obtained from the Village Office: the Certificate of Non-Dispute (Surat Keterangan Tidak Sengketa), the Land History Certificate (Surat Keterangan Riwayat Tanah), and the Certificate of Sporadic Land Ownership (Surat Keterangan Penguasaan Tanah Secara Sporadik). Additionally, the applicant must provide a photocopy of their Identity Card (KTP) and Family Card (KK), a photocopy of the Land and Building Tax (PBB) Payment Notification Letter, a Power of Attorney if the certification process is being handled by a representative, a Statement Letter confirming that boundary markers have been installed, and any other supporting documents required by law.

After submitting the application, the next step is land measurement, conducted by an authorized surveyor from the Land Office. The surveyor, carrying an official assignment letter issued by the Head of the Land Office, will measure the land according to the boundaries provided by the applicant. This process ensures that the registered land area accurately matches the actual conditions on-site, preventing discrepancies and future disputes.¹⁴

Once the measurement of the girik land is completed, the issuance of a measurement letter (Surat Ukur) will be carried out. This document contains the results of the land survey and is signed by an authorized official from the ****National Land Agency (Badan Pertanahan Nasional - BPN)**. Following this, further examination is conducted to verify and analyze the physical and legal data in the field, comparing them with the data submitted in the application.

¹³ *Ibid.*

¹⁴ *Ibid.*

Next, the announcement of juridical data is made to ensure that no party objects to the land rights application. If any objections arise, the certification process will be put on hold until the dispute is resolved. If no objections are raised, the process continues with the issuance of the Land Rights Decree (Surat Keputusan Hak Atas Tanah) by the Head of the Land Office. This decree legally confirms the conversion of girik land ownership into a certified land title.

Following this, the applicant must complete the payment of the Land and Building Rights Acquisition Tax (Bea Perolehan Hak atas Tanah dan Bangunan - BPHTB). This payment is mandatory before the certificate is officially issued by the Sub-Section of Rights Registration and Information. The final stage of the process is the registration and issuance of the Land Ownership Certificate (Sertifikat Hak Milik - SHM). The decree is officially registered, allowing the certificate to be issued. Once signed by the authorized official, the girik land ownership status is formally converted into an official land certificate, granting full legal recognition and protection to the owner.

CONCLUSION

The existence of girik in agrarian law is recognized as preliminary evidence that must be supported or strengthened with additional data. Under the Basic Agrarian Law (Undang-Undang Pokok Agraria - UUPA), girik is not acknowledged as valid proof of land ownership. The only legally recognized proof of ownership under the UUPA is a land certificate (sertifikat tanah). As previously explained, girik cannot serve as evidence of land ownership; however, it can be used as proof of land possession before being submitted as juridical data in the land registration process. Since the UUPA states that the only legally valid proof of land ownership is a certificate, the legal strength of a certificate provides strong evidentiary power for the landowner, even if the land is subject to a legal dispute, unless a final and binding court ruling states otherwise.

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