

Legality Of Land And Building Objects In The Tomb Of Ki Ageng Gribig, Malang CityIsdiyana Kusuma Ayu¹, Pinastika Prajna Paramitha², Lina Alfiana³, Isdian Anggraeny⁴¹Fakultas Hukum, Universitas Islam Malang, isdiyana@unisma.ac.id²Fakultas Hukum, Universitas Islam Malang³Fakultas Hukum, Universitas Islam Malang⁴Fakultas Hukum, Universitas Muhammadiyah Malang**ABSTRACT**

The Ki Ageng Gribig Tomb area is planned to be developed as a santri village that presents a village model that carries a religious theme. People come to travel or to trade around the area. Merchants who will sell around the tomb area of Ki Ageng Gribig will live on land. If it lasts for a long time, the merchant will use a vacant lot to sell and will harm the original owner. So it is necessary to have awareness of the indigenous people living in the area around the Ki Ageng Gribig Tomb area to have proof of land ownership rights. The purpose of the study was to find out and analyze related to evidence of land ownership owned by the community living around the Tomb of Ki Ageng Gribig. Another purpose is to describe the urgency of ownership of the legality of land or buildings for people living around the Ki Ageng Gribig Tomb area. This research uses empirical juridical research methods with a sociological juridical approach. The result of this study is that before the birth of UUPA, residents who lived around the Tomb area of Ki Ageng Gribig already had proof of rights in the form of eigendom rights and had been converted into property rights. The ownership of evidence of land ownership is very important because residents will get their full rights if one day the development of the Ki Ageng Gribig Tomb Area takes place. The certificate of land rights will be strong evidence for those who hold it, so that when the development of the Ki Ageng Gribig Tomb area becomes a religious tourism village, the surrounding community will get reimbursement by the provisions of the Land Acquisition.

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PRELIMINARY

Registration of land rights is important because through registration it becomes easy to prove that he is the holder of rights to the land he has controlled and minimize the occurrence of land ownership disputes, having a legal land certificate¹. Land registration in Indonesia is an important thing that must be done by the community to obtain legal certainty for the land they own. This legal certainty has been guaranteed by the Government in accordance with Article 19 of Law Number 5 of 1960 concerning Agrarian Principles. Furthermore, the Government to provide a means in providing guarantees of legal certainty

¹ Eliana, Reni Suryani, dan Naib, "Legalitas Kepemilikan Tanah," *Bhakti Hukum Jurnal Pengabdian Kepada Masyarakat* 1, no. 1 (2022).

by issuing Government Regulation Number 24 of 1997 concerning Land Registration (hereinafter referred to as PP No. 24 of 1997). Article 3 letter a PP Number 24 of 1997 states that Land Registration aims to provide legal certainty and legal protection to the holder of rights to a plot of land, units of flats, and other registered rights so that they can easily prove themselves as the holder of the rights concerned. The form given to the holder of land rights based on Article 4 is a certificate of title to land which is a letter of proof of rights.

The legality of land is proof of ownership of land or land inhabited by the community. With the legality of land ownership, there will be no interference and ownership from other parties. The legal form of land ownership held by the community is a land certificate. By law, the basis for the validity of the legality of ownership of land objects or buildings is a certificate of property rights which is the strongest and fullest evidence that people can own of land in accordance with Article 20 paragraph (1) of the UUPA and Article 32 paragraph (1) of PP Number 24 of 1997.

Land ownership can also be proved by Petok D or Letter C. This ownership does prove that a person controls the land. However, the weakness of this letter is that it does not provide legal certainty in both physical data and juridical data from the land. In addition, if the community needs a loan from the bank, then this letter does not have more value when compared to the certificate of land rights.

People who have the legality of land ownership will get legal certainty and legal protection if in the future there are parties who prove otherwise. The problem that often arises is related to dual ownership in one land, namely that the land is still vacant land or there are buildings but are not occupied by the owner. Especially if an area is going to be developed for tourism, people who have an interest in trading can use these lands and if they are very well developed then what was originally the land was only used temporarily can be occupied for a long time and will harm the landowner.

Indonesia is an archipelagic country that has economic, social, and cultural diversity. Diversity in each region of Indonesia makes Indonesia have its own characteristics and makes it easier for the development of tourism, both natural, cultural, and religious tourism. Bank Indonesia declares tourism to be the most effective sector to increase Indonesia's foreign exchange². This is because the resources needed to develop tourism are already available in the country. Human resources, natural resources, culture, culinary and existing wealth are the main attractions for domestic and foreign tourists.

Tourism that can be developed is religious tourism or religious tourism. Religious tourism is a tour that aims to meet the spiritual needs of human beings to strengthen faith by visiting places that have religious value. Enthusiasts of religious tourism or religious tourism are caused by the culture of the existing community. The naming of an area is carried out spontaneously by tourist transportation service providers, managers and custodians of the tomb area of the saints, community leaders and the community at large³.

Ki Ageng Gribig has a historical relationship with Malang City, therefore the land around the cemetery is taken care of and also guarded by the Malang City Government and plans to become one of the religious tourism villages in Malang City to be developed. The Ki Ageng Gribig area is planned to be developed as a student village that presents a village model that carries a religious theme⁴. The development of religious tourism at the Tomb of Ki Ageng Gribig will increase positive activities also for the people living around the tomb area. If successfully developed, it is possible that the tomb of Ki Ageng Gribig can become like Sunan Ampel's religious tourism in Surabaya.

² Adenisa Aulia Rahma, "Potensi Sumber Daya Alam dalam Mengembangkan Sektor Pariwisata di Indonesia," *Jurnal Nasional Pariwisata* 12, no. 1 (2020): 1–8, https://journal.ugm.ac.id/tourism_pariwisata/article/viewFile/52178/27432.

³ Muhammad Fahrizal Anwar, Djahur Hamid, and Topowijono, "Analisis Dampak Pengembangan Wisata Religi Makam Sunan Maulana Malik Ibrahim Dalam Kehidupan Sosial Dan Ekonomi Masyarakat Sekitar (Studi Pada Kelurahan Gapurosukolilo Kabupaten Gresik)," *Jurnal Administrasi Bisnis* 44, no. 1 (2017): 186–93.

⁴ Doni Kurniawan, "Pengembangan Kawasan Ki Ageng Gribig Menjadi Kampung Tematik Islami," *Malang Pagi*, 2021.

The impact of tourism in an area includes social and economic impacts. The more increase in visitors who come, the greater the impact will have. This will also affect the surrounding community because there will be many people who come to travel or to trade around the area. Merchants who will sell around the tomb area of Ki Ageng Gribig will definitely live in a field. If it lasts for a long time, the merchant will use a vacant lot to sell and will harm the original owner. So there is a need for awareness of indigenous people living in the area around the Ki Ageng Gribig tomb area to have proof of land ownership rights.

The problem that will be studied is what is the status of land and building ownership around the Ki Ageng Gribig Tomb Area, and What is the legal force of ownership of land rights or buildings of people living around the Ki Ageng Gribig Cemetery area? This study aims to identify the status of land ownership and community buildings living around the Ki Ageng Gribig Tomb area and also analyze the legal strength of ownership of land rights or community buildings living around the Ki Ageng Gribig Tomb Area.

METHOD

The type of research used in this study is empirical juridical research. In this study, researchers will examine the Legality of Ownership of Land Objects or Buildings Around the Ki Ageng Gribig Burial Area which has been regulated in PP No. 24 of 1997. The type of research approach used in this research is a sociological juridical approach. The qualitative descriptive analysis method is to describe the data obtained in the field and then the data will be analyzed by relating to legal theories and laws and regulations so that conclusions and suggestions can be drawn.

RESULT AND DISCUSSION

1. Status of Land and Building Ownership Around the Ki Ageng Gribig Tomb Area

The research location is in Madyopuro Village, Kedungkandang District, Malang City, East Java. This location is the tomb of Ki Ageng Gribig who is a figure spreading Islam in Malang City and the location is a religious tourism object where people visit the tomb for pilgrimage. The location of Ki Ageng Gribig's tomb is adjacent to the people who also live in the area. The number of residents in the tomb area of Ki Ageng Gribig is 80 Family Cards (KK) which are included in Rukun Warga 04, Rukun Tetangga 04. The boundaries of the Ki Ageng Gribig Tomb are east bordered by settlements, west and north bordered by tombs, and to the south bordered by paths.

Based on the results of research on the community around the Tomb of Ki Ageng Gribig, the ownership of community land used to be eigendom rights. This right was obtained because the area had been inhabited since the ancestors who obtained land in the form of eigendom rights. The right of eigendom which is a form of western right, then with the issuance of the UUPA it is necessary to convert it in accordance with existing provisions.

The right of eigendom is a western right which was previously controlled by foreigners. Before the birth of UUPA, land law in Indonesia was bilistic, meaning that it applied side by side two sets of land law, namely customary land law and western land law⁵. The right of eigendom is the highest right of possession of land which is private property⁶. This dualistic nature in land no longer exists with the birth of Law Number 5 of 1960 concerning Agrarian Principles (UUPA). Article 21 of the UUPA provides an affirmation that only Indonesians can have a full relationship with the earth, water, space and natural wealth contained therein.

The land rights to the former eigendom rights were not converted and not transferred to a third party and the land was again controlled by the state. Regulation of the Minister of Agrarian Affairs Number 2 of 1960 concerning the Implementation of the Provisions of the

⁵ M Bakri, "Unifikasi Dalam Pluralisme Hukum Tanah Di Indonesia (Rekonstruksi Konsep Unifikasi Dalam UUPA)," *Kertha Patrika* 33, no. 1 (2008): 1–5.

⁶ Budi Harsono, *Hukum Agraria Indonesia, Sejarah Pembentukan UUPA, Isi Dan Pelaksanannya* (Jakarta: Djambatan, 2003).

UUPA stipulates that the conversion of eigendom rights is determined by the nationality of the rights owner⁷ :

- a. Indonesian citizens who are sole nationals and have eigendom rights within six months from that date must come to the Head of the Land Registration Office to provide firmness regarding citizenship.
- b. Indonesian citizens of foreign descent require an affirmation of nationality by proving a valid nationality or other proof

For those who are proven to be single Indonesian citizens, eigendom rights will become property rights by the way the KKPT records them in the original and grosse of the deed. If it is more than six months, the eigendom right becomes the right to use the building. However, if it is not converted, it will be declared dead into state land⁸.

Systematic land registration was carried out from the era of President Soeharto to President Joko Widodo. The people around the tomb area of Ki Ageng Gribig explained that they followed the "pemutihan"⁹. Pemutihan referred to by the community, namely the Agrarian National Operations Project (Prona) was registered in 1987. The community participated in the Prona program from eigendom rights to property rights land. Prona's activities have continued until now when the Government changed the program to the Complete Systematic Land Registration (PTSL). This can be seen in 2018 the community around the Ki Ageng Gribig tomb area is still participating in the activity to change the status of their land to property rights.

The community around the Ki Ageng Gribig Tomb area also registered their land through sporadic land registration. Sporadic land registration is the activity of registering land rights on the own initiative of the owner. People around the Ki Ageng Gribig Tomb area used this registration because they missed the opportunity to participate in the systematic Land Registration organized by the Government.

The conversion carried out by the community both systematically and sporadically aims to obtain legal certainty for land rights holders. The legal consequence of the registration of land rights is the granting of a certificate of proof of rights called a strong land certificate against the holder of land rights. The land rights certificates issued from the two registrations of land rights both provide legal certainty. The conversion of rights carried out by the Ki Ageng Gribig community issued a certificate in the form of a title certificate.

A title certificate is a form of proof of land rights. Property Rights are rights regulated in Article 20 paragraph (1) of the UUPA which reads:

"The hereditary, strongest, fullest rights, which people can have over land."

From this understanding, the elements of property rights include¹⁰ :

1. Hereditary, meaning that title to land lasts as long as the owner is still alive and if the owner dies, the right will pass to the heirs.
2. Strongest, meaning that property rights to land are stronger than other land rights.
3. Fullest, meaning that title to land authorizes its owner more broadly than other land rights.

Property rights are different from eigendom rights. The right of eigendom is a material right in which the person who has the eigendom has the authority to use or enjoy the object freely and fully and control the object as widely as possible. The right of eigendom is absolute, unlimited, and inviolable. This concept is different from property rights even though it has a hereditary, strongest, and fullest nature but is not absolute. The title certificate owned by the rights holder has a strong proof. A land certificate as a strong proof of rights is valid as a strong evidentiary tool related to physical data and juridical data in

⁷ Made Suartini, Dewa Gede Budiarta, and Putu Andhika Kusuma Yadnya, "Kekuatan Hukum Pendaftaran Hak Atas Tanah Bekas Hak Eigendom," *Majalah Ilmiah Untab* 17, no. 1 (2020): 63–68.

⁸ Dian Aries Mujiburrohman, "Legalisasi Tanah-Tanah Bekas Hak Eigendom," *Jurnal Yudisial* 14, no. 1 (2021): 117–37.

⁹ Hasil wawancara dengan Bapak Junaidi selaku Ketua Rukun Warga 04.

¹⁰ Urip Santoso, *Hukum Agraria Dan Hak-Hak Atas Tanah* (Jakarta: Prenada Media Grup, 2010). Hlm 59

accordance with the data in the measuring letter and land book. Thus, it can be concluded that as long as neither party sues and proves otherwise from the physical data and juridical data, then the name listed in the certificate remains authorized over the land¹¹. Title holders are indeed stronger than other land rights. This means that property rights can be the parent of other rights, for example the title holder can rent them out to someone else. As long as it is not restricted by the ruler, then the authority of a title holder is unlimited. In addition to being hereditary, strongest and fullest, property rights can also be transferred and transferred to other parties¹¹.

2. The Legal Force of Ownership of Land Rights or Community Buildings Living Around the Ki Ageng Gribig Burial Area

Ki Ageng Gribig cemetery area is one of the religious tourism destinations in Malang City. The people of Malang City or even from outside make a pilgrimage at the Ki Ageng Gribig cemetery. A tourist destination in an area can be a source of regional income. The status of Ki Ageng Gribig's tomb land according to the head of the RW and Pak Devi as the Tourism Awareness Group (Pokdarwis) said that the Ki Ageng Gribig Tomb land is an asset of the Malang City Government. For the problem of widening the area for tourist destinations Ki Ageng Gribig according to Mr. Devi as Pokdarwis for now it is not very necessary because judging from the current need for widening the area does not need to be seen from pilgrims to tombs is still small and can still be controlled, but one day it is needed they will prioritize or prioritize the public interest.

Although the development of the area has not yet been carried out, the community around the Ki Ageng Gribig cemetery area must obtain legal certainty and legal protection regarding the residences that have been inhabited for generations. The public interest based on Law Number 2 of 2012 concerning Land Acquisition is the interest of the nation, state, and society that must be realized by the Government and used as much as possible for the prosperity of the people. This understanding explains that if the Government needs land for public interest activities such as road widening, then the Government can procure land for the development. Land in Indonesia is attached to the principle of social function of land rights. The principle of social functioning of land rights contains the recognition that individual interests, social interests, and public interests over land. This principle also authorizes the owner of the right to exercise ownership of the land within the limits prescribed by law while taking into account the interests of the community and the state¹². This principle of social functioning provides consequences for the rights and obligations of land rights holders in utilizing their land. So, ownership of land is not only a right but also a social function.

Recognition of property rights is also regulated in Article 36 of Law Number 39 of 1999 concerning Human Rights (Human Rights Law), namely:

- (1) "Everyone has the right to have property rights, either alone or jointly with others for the development of himself, family, nation, and society in a non-unlawful manner;
- (2) No one shall be deprived of his property arbitrarily and unlawfully;
- (3) "Property rights have a social function."

Based on these provisions, it can be interpreted that property rights are the right of every citizen to meet his needs and property rights are protected by law but are also limited by social functions. If it is needed in the public interest, the Government will carry out land acquisition and will provide reasonable compensation in accordance with existing provisions.

¹¹ Adrian Sutedi, *Peralihan Hak Atas Tanah Dan Pendaftarannya* (Jakarta: Sinar Grafika, 2010). Hlm. 82

¹² Triana Rejekiningsih, "Asas Fungsi Sosial Hak Atas Tanah Pada Negara Hukum (Suatu Tinjauan Dari Teori, Yuridis Dan Penerapannya Di Indonesia)," *Yustisia Jurnal Hukum* 5, no. 2 (2016): 298–325, <https://doi.org/10.20961/yustisia.v5i2.8744>.

Social fungsi of land rights are regulated in the UUPA and become the main source of national land law. The social function of land rights is one of the three obligations in the UUPA which is generally imposed on every land rights holder¹³:

- a. Obligation to carry out the social function of land rights (Article 6)
- b. Obligation to maintain land (Article 52 paragraph (1))
- c. Obligation to actively work on agricultural land yourself (Article 10)

The application of the principle of social function of land rights has the principle that every holder of a title certificate as a land user in using his land does not harm individual interests, social interests, and public interests over land. If the land is to be used for public purposes, the party entitled to compensation is the party who holds the land certificate. This also applies to the communities around the Ki Ageng Gribig Tomb area, if one day there will be a widening of the road, then the community can give their land and will receive proper compensation.

The community around the Ki Ageng Gribig cemetery area already has a certificate of land rights. A certificate of land rights provides legal certainty and legal protection to its rights holders. The certificate as a sign of proof of rights of a strong nature meets the elements cumulatively, namely¹⁴:

- a. The certificate is validly issued on behalf of a person or legal entity.
- b. Land acquired in good faith and real faith.
- c. Within 5 (five) years from the issuance of the certificate, no one has filed a written objection to the certificate holder and the head of the local City/Regency Land Office or has not filed a lawsuit with the Court regarding land tenure or certificate issuer.

The ownership of community property rights certificates in the Ki Ageng Gribig Tomb area is proof of legal ownership of land and buildings. The title certificate becomes the strongest proof and the holder of the title certificate can manage the land he owns indefinitely. The title certificate has the highest position in the event of dispute resolution. In the field of land, what is evidence of legal land ownership is a land certificate issued by the National Land Agency which aims to provide legal certainty and legal protection for land rights holders based on Article 1 paragraph (20) of Government Regulation Number 24 of 1997 concerning Land Registration.

"A certificate is a letter of proof of rights as referred to in Article 19 paragraph (2) letter c of the UUPA for land rights, management rights, waqf land, property rights to units of flats and dependent rights, each of which has been recorded in the land book concerned."

The urgency of ownership of land rights certificates, especially property rights in the area around the Ki Ageng Gribig Cemetery, can make people more able to maintain their land ownership. This is in anticipation when one day there is a widening of the Ki Ageng Gribig religious tourism area. People who have lived in the area for generations will still get their rights when there will be land acquisition for the public interest in the form of decent compensation.

Ownership of a certificate of land rights as proof in accordance with Article 19 paragraph (2) letter c of the UUPA, namely a certificate as a strong evidentiary tool in the form of physical and juridical data contained in the certificate is considered correct as long as no other party can prove the opposite with other similar evidence or other than the certificate. The existence of land certificates will reduce conflicts over land disputes between residents and residents, residents with the government, and residents with private companies.

The ownership of land certificates is also important because with the birth of Law Number 11 of 2020 concerning Job Creation (Job Creation Law), Article 123 number 10 of the Job Creation Law states that tourism areas are a form of public interest that the Government can take to carry out land acquisition. Land acquisition is an activity to obtain

¹³ Oloan Sitorus and Zaki Sierrad, *Hukum Agraria Konsep Dasar Dan Implementasi* (Yogyakarta: Mitra Kebijakan Tanah Indonesia, 2006). Hlm. 102

¹⁴ Urip Santoso, *Hukum Agraria Dan Hak-Hak Atas Tanah*. (Jakarta: Kencana, 2015). Hlm. 79

land by providing compensation to parties who release or hand over land, buildings, crops, and objects related to the land. Land acquisition is the Government's activity to provide land by providing appropriate and fair compensation for the rightful party. Parties entitled to land acquisition are parties who control and own the object of land acquisition which means that they have proof of ownership such as a certificate of land rights or other evidence that is still recognized.

The ownership of land certificates owned by the community around the Ki Ageng Gribig Cemetery area will make the community sure to get compensation if one day there is an expansion of the religious tourism area. Ownership of property rights certificates owned by people living in the Ki Ageng Gribig Tomb area has important meanings, namely:

- a. The certificate provides legal certainty for the party named on the land rights certificate.

The owner will feel calm and peaceful because he feels protected from irresponsible actions from other parties. The name listed on the certificate of title to the land that is entitled to carry out legal acts related to the land. In addition, he will also be the party entitled to compensation when his land is needed by the Government as an object of land acquisition.

- b. The issuance of a certificate by the Land Office will prevent land disputes from occurring.

Land disputes are regulated in the Regulation of the Head of the Indonesian National Land Agency Number 3 of 2011 which has given the understanding that land disputes are land disputes involving legal entities, institutions or individuals and socio-politically do not have a broad impact. Land disputes can be divided into three namely mild cases, medium cases, and severe cases. A mild case is a case related to administrative technicalities. A moderate case is a case that involves the law in its resolution and a clear administration but does not cause social, political, security and economic symptoms. A severe case means a case involving many people and a legal dimension that is complex enough to cause socio-political turmoil.

This land dispute can be minimized by the issuance of a certificate of land rights. Land certificates issued in accordance with the rules, namely PP Number 24 of 1997 and other technical rules will prevent land disputes. The issuance of certificates is an administrative matter. If the issuance of a community certificate around the Ki Ageng Gribig Tomb area is in accordance with PP Number 24 of 1997, then legal certainty and legal protection for landowners will be obtained.

- c. The issuance of a certificate may allow the owner of the right to the land to perform any legal act as long as it does not conflict with the Law, public order, and decency.

The owner of the certificate is the person in charge of the land. Legal actions that can be done by Landowners, namely Buying and Selling, Grants, Sharing of Common Rights, Exchanging, become debt guarantees with dependent rights institutions. All forms of legal action related to the transfer of land rights must be accompanied by an authentic deed made before the Land Deed Making Officer which is continued by the name reversal process at the Land Office.

- d. Land rights certificates also have high economic value if they are used as collateral for debt.

People, especially those who live in the Ki Ageng Gribig Tomb area who need funds, can make the land they own as collateral for debt with dependent rights. The UUPA and the Dependent Rights Law only impose dependent rights on land that has been registered. This means that it must be land that has the status of land rights regulated in the UUPA. With the title certificate, the land will increase in value and make it easier for every economic business actor to obtain their business capital and to increase their business.

The certificate of land rights is proof of land ownership, there are two aspects of proof so that the ownership becomes strong and perfect, namely first, proof of the letter in which

there are 4 main things that must be fulfilled in its issuance such as status and legal basis, identity of the rights holder (certainty of the subject), location and object of the land (certainty of objects), and issuance procedures regulated in Government Regulation Number 24 of 1997 concerning Land Registration. Second, physical evidence that serves as certainty that the person concerned actually physically controls the land and avoids two different possessions of rights¹⁵.

CLOSING

The ownership status of land and buildings around the Ki Ageng Gribig Tomb Area is an eigendom right that has been converted into property rights through systematic and sporadic land registration. The urgency of ownership of the legality of land or buildings for people living around the Ki Ageng Gribig Tomb Area is so that the community can maintain their rights if there are irresponsible parties, become parties who are entitled to proper compensation when there will be a widening of the road in the Ki Ageng Gribig Tomb area, and increase the economic value of the certified land owned by the community.

The community around the Ki Ageng Gribig Tomb area should realize that land ownership in the form of land rights certificates, especially property rights, is very important because it provides certainty and legal protection. The government must also be fair and in accordance with existing provisions regarding the provision of appropriate compensation if it is going to widen the road in the Ki Ageng Gribig Tomb Area.

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¹⁵ Fandi Entiman Nae, "Kepastian Hukum Terhadap Hak Milik Atas Tanah Yang Sudah Bersertifikat," *Lex Privatum* 1, no. 5 (2013): 54–63.

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