



## Legal Protection for Land Rights Holders Beyond Administrative Registration: Re-Examining The Declarative Function of Land Registration in Indonesia

**M. Filusi Ardiansyah<sup>1</sup>, Darwati<sup>2</sup>**

<sup>1</sup>Universitas Borobudur, Jakarta, Indonesia, [mfardiansyah70@gmail.com](mailto:mfardiansyah70@gmail.com)

<sup>2</sup>Universitas Borobudur, Jakarta, Indonesia, [darwati@borobudur.ac.id](mailto:darwati@borobudur.ac.id)

Corresponding Author: [mfardiansyah70@gmail.com](mailto:mfardiansyah70@gmail.com)<sup>1</sup>

**Abstract:** Land registration has long been positioned as a central mechanism for achieving legal certainty within land administration systems. In Indonesia, registration is formally designed to function as a declarative mechanism that records and publicizes existing land rights, thereby supporting administrative order and evidentiary clarity. Nevertheless, in legal practice, land registration is increasingly treated as a decisive factor that determines the existence and enforceability of land rights. This shift reflects a tendency to equate legal protection with administrative registration status, rather than with the substantive legitimacy of land relations. This article examines legal protection for land rights holders beyond administrative registration by re-examining the declarative function of land registration in Indonesia. Using a normative juridical research method, the study analyzes statutory regulations, legal doctrines, and judicial reasoning to assess how far registration has departed from its intended evidentiary role. The analysis demonstrates that substantive land rights may arise independently of registration through possession, contractual relations, inheritance, and recognition under customary law. When registration is elevated to a quasi-constitutive status, these rights risk marginalization despite their legal legitimacy. The article argues that effective legal protection requires a clear distinction between the existence of land rights and the administrative mechanisms used to evidence them. Land registration should operate as a supportive instrument that strengthens legal certainty without excluding substantively valid rights. By reaffirming the declarative function of registration, Indonesia's land administration system can better harmonize administrative certainty with substantive justice and ensure more inclusive protection for land rights holders.

**Keyword:** Legal Protection, Land Registration, Declarative Function, Substantive Land Rights, Agrarian Law.

### INTRODUCTION

Land registration occupies a pivotal position in modern land administration systems, particularly in jurisdictions that seek to promote legal certainty, transparency, and administrative order. Through registration, land rights are formally recorded and made visible

within an official legal framework, enabling the state to manage land relations in a structured and predictable manner. In many legal systems, registration is expected to reduce disputes, facilitate transactions, and provide evidentiary clarity regarding ownership and control over land.

In Indonesia, land registration has been institutionally framed as a declarative mechanism. Under this framework, registration does not create land rights, but records and evidences rights that already exist based on lawful relations. Certificates issued through the registration process function as strong proof of rights, while the underlying land rights themselves arise from substantive legal events such as possession, transfer, inheritance, or recognition under customary law. Normatively, this model reflects an understanding that administrative procedures serve to support, rather than determine, the existence of land rights.

Despite this normative design, legal practice increasingly reveals a shift in the function of land registration. Registration status is often treated as a decisive factor in determining whether land rights are recognized and protected. Registered land is commonly perceived as legally secure, whereas unregistered land is frequently regarded as uncertain or vulnerable. This perception has influenced administrative decision-making, dispute resolution, and public understanding, resulting in a gradual transformation of registration from a declarative mechanism into a quasi-constitutive one.

The consequences of this transformation are significant. When legal protection is closely tied to registration status, land rights holders whose rights exist outside formal registration procedures may face exclusion from protection. Substantive land relations such as long-standing possession, contractual arrangements, inheritance, and customary land tenure may be disregarded simply because they lack administrative documentation. In such circumstances, legal protection shifts away from safeguarding legitimate rights toward enforcing procedural compliance, thereby narrowing the protective scope of land law.

This tendency raises fundamental questions regarding the proper function of land registration within the Indonesian agrarian legal system. If registration is treated as the primary determinant of legality, the distinction between the existence of rights and the evidence of rights becomes blurred. Legal certainty, pursued through administrative uniformity, risks overriding substantive justice when legitimate land relations are excluded from recognition. The issue is particularly acute in Indonesia, where structural barriers such as administrative complexity, geographic constraints, and unequal access to legal information continue to affect the ability of land rights holders to complete registration.

The problem is further compounded by Indonesia's pluralistic land tenure system. State law coexists with customary law, and land rights may derive from communal recognition and long-standing social practices that do not rely on formal documentation. When registration mechanisms are applied rigidly and without accommodation for legal diversity, customary land rights are especially vulnerable to marginalization. This situation undermines not only individual rights, but also public trust in land administration institutions.

Judicial practice illustrates the ambiguity surrounding the function of land registration. Courts are frequently required to assess the evidentiary value of land certificates alongside proof of substantive land relations. While certificates are generally treated as strong evidence, judicial decisions do not consistently regard registration as conclusive. In several cases, courts have acknowledged unregistered rights when supported by credible substantive evidence. Nevertheless, inconsistencies in judicial reasoning reflect the absence of a clear doctrinal consensus on the declarative nature of land registration.

Against this background, a re-examination of the declarative function of land registration becomes necessary. Legal protection for land rights holders cannot be reduced to administrative status alone, but must be grounded in the legitimacy of substantive land relations. Understanding registration as an evidentiary and administrative instrument, rather

than as a gatekeeping mechanism, is essential to preserving the protective function of land law.

This article examines legal protection for land rights holders beyond administrative registration by re-assessing the declarative function of land registration in Indonesia. Rather than questioning the importance of registration, the study seeks to clarify its normative role within the agrarian legal framework. The central argument advanced is that effective legal protection requires a clear separation between the existence of land rights and the administrative processes used to evidence them. By reaffirming the declarative nature of registration, land administration can better harmonize legal certainty with substantive justice and provide more inclusive protection for land rights holders.

## METHOD

This study employs a normative juridical research method to examine legal protection for land rights holders beyond administrative registration, with a particular focus on the declarative function of land registration in Indonesia. The normative approach is selected because the research is concerned with legal norms, principles, and doctrinal constructions governing land rights and land administration, rather than with empirical measurement or quantitative analysis. The objective of the study is to assess how the law conceptualizes the relationship between land registration and substantive land rights, and whether current legal arrangements adequately protect rights that exist outside formal registration.

The research applies three main approaches: a statute approach, a conceptual approach, and a jurisprudential approach. The statute approach involves an examination of laws and government regulations that constitute the legal foundation of Indonesia's agrarian system and land registration framework. These statutory materials are analyzed to identify the normative objectives of land registration, the legal status of registered land, and the consequences of registration and non-registration. Particular attention is given to provisions that reflect the declarative nature of land registration and to regulatory norms that influence how legal protection is administered in practice.

In addition to statutory analysis, this study adopts a conceptual approach to clarify key legal concepts relevant to the research, including legal protection, legal certainty, substantive land rights, and the declarative versus constitutive functions of land registration. These concepts are derived from legal doctrine and scholarly discourse in agrarian law and administrative law. The conceptual approach is used to evaluate whether the practical operation of land registration remains consistent with its normative design as an administrative and evidentiary mechanism, or whether it has shifted toward a constitutive role that affects the scope of legal protection.

A jurisprudential approach is also employed through the analysis of selected judicial decisions related to land disputes and land registration. Judicial decisions are examined to understand how courts interpret the evidentiary value of land certificates and how they balance administrative records with proof of substantive land relations, such as possession, transactions, inheritance, and customary recognition. This approach provides insight into how the declarative function of registration is applied in dispute resolution and how legal protection is articulated through judicial reasoning.

The legal materials used in this study consist of primary, secondary, and tertiary sources. Primary legal materials include statutes and government regulations governing agrarian affairs and land registration. Secondary legal materials comprise legal textbooks, academic journal articles, and scholarly writings that discuss land law, legal protection, and land administration. Tertiary legal materials, such as legal dictionaries and encyclopedias, are utilized to support conceptual clarification where necessary.

The analysis is conducted qualitatively through systematic interpretation of legal norms, doctrines, and judicial reasoning. This method involves identifying normative consistencies and tensions between administrative objectives and substantive principles of land law. Rather than proposing empirical generalizations, the research aims to provide a normative evaluation of the declarative function of land registration and its implications for legal protection. Through this methodological framework, the study seeks to assess whether land registration in Indonesia effectively supports legal protection for land rights holders beyond administrative registration.

## RESULT AND DISCUSSION

Judicial practice in land dispute resolution demonstrates that land registration in Indonesia operates within a complex interaction between administrative documentation and substantive land relations. Although land certificates are widely regarded as the primary instrument for evidencing land rights, judicial reasoning reveals that registration does not uniformly function as an absolute determinant of legal protection. Instead, courts are frequently required to assess the evidentiary strength of certificates alongside proof of substantive land relations that may exist independently of administrative registration.

From an evidentiary perspective, land certificates are generally treated as *prima facie* evidence of rights. Their probative value derives from their issuance by state authorities following administrative procedures intended to ensure accuracy, publicity, and legal order. In this sense, certificates contribute significantly to administrative certainty by providing a stable reference point for transactions and dispute resolution. Judicial reliance on certificates also reflects practical considerations: documentary evidence allows courts to reconstruct legal relations efficiently, particularly in disputes involving overlapping claims or competing assertions of ownership.

However, judicial decisions also reveal an implicit awareness of the limitations inherent in treating certificates as conclusive proof. Administrative certainty does not necessarily equate to substantive certainty. A certificate may accurately reflect administrative records while failing to capture the full legal and factual history of land relations. Errors in boundary determination, incomplete verification, exclusion of prior rights holders, or procedural deficiencies during registration may result in certificates that are formally valid but substantively problematic. When courts uncritically elevate certificates to an absolute status, administrative form risks eclipsing substantive legitimacy.

This tension becomes evident in cases involving claims derived from possession, inheritance, contractual relations, or customary recognition. Long-standing possession, particularly when exercised in good faith and accompanied by visible land use, often reflects a substantive relationship that predates formal registration. Inheritance-based claims may similarly rest on socially and legally recognized succession processes that are not immediately reflected in registration records. Contractual land relations, especially those concluded prior to systematic registration or in contexts of limited administrative access, may produce legitimate rights that remain undocumented. Customary land tenure further complicates the picture, as its evidentiary foundation often relies on communal acknowledgment and historical continuity rather than individual certificates.

Judicial reasoning in such cases demonstrates variability. In some decisions, courts acknowledge that substantive land rights may exist independently of registration and allow certificates to be rebutted by credible contrary evidence. This approach reflects a declarative understanding of land registration, whereby certificates document and evidence rights rather than create them. Under this model, legal protection is not confined to registered land alone but extends to substantively valid land relations supported by factual and legal proof. Certificates retain their strength as evidence, yet their presumption remains rebuttable.

In other decisions, however, courts appear to subordinate substantive claims solely due to the absence of registration, effectively transforming registration into a gatekeeping mechanism for legal protection. This quasi-constitutive orientation equates legality with administrative status, thereby narrowing the scope of protection to those who have successfully navigated bureaucratic procedures. Such reasoning risks marginalizing legitimate land relations and undermining the protective function of land law, particularly in a context where access to registration remains uneven.

The distinction between evidentiary certainty and substantive certainty is central to understanding this divergence. Evidentiary certainty prioritizes documentary clarity and administrative order, ensuring that land relations are recorded and publicly accessible. Substantive certainty, by contrast, emphasizes the legitimacy of land relations based on lawful conduct, good faith, and social recognition. When evidentiary certainty is pursued in isolation, legal outcomes may become predictable in form yet unjust in substance. Judicial interpretation plays a critical role in reconciling these two dimensions of certainty by determining how far administrative documentation should prevail over substantive proof.

The assessment of good faith further illustrates the normative dimension of judicial reasoning. Certificates do not exist in a vacuum; they are embedded in factual contexts involving conduct, knowledge, and reliance. Where a certificate holder acquires or relies upon registration in good faith, without awareness of prior claims or irregularities, the argument for strong legal protection is compelling. Conversely, where registration is obtained or invoked with knowledge of existing possession, unresolved inheritance claims, or customary land relations, the normative basis for absolute protection weakens. Judicial sensitivity to good faith therefore functions as a filter that distinguishes legitimate reliance on administrative records from opportunistic formalism.

Legal protection theory reinforces this approach. The protective function of law lies in preventing arbitrary deprivation of rights and ensuring that procedural mechanisms do not become instruments of exclusion. Administrative procedures, including land registration, are designed to serve these normative objectives rather than to displace them. When courts treat certificates as irrebuttable, legal protection risks becoming procedural rather than substantive, privileging administrative compliance over lawful land relations. By contrast, when courts allow substantive proof to rebut documentary presumption, legal protection aligns more closely with its normative foundation.

Legal pluralism adds further complexity. Indonesia's agrarian system accommodates diverse tenure arrangements, including customary land rights that may not conform to individual registration models. Judicial insistence on certificates as the sole basis of legality risks collapsing pluralistic legitimacy into a single administrative form. Such an approach may undermine social trust and intensify land conflicts, particularly where customary communities experience registration as inaccessible or incompatible with their tenure practices. Judicial recognition of customary claims, supported by credible evidence, reflects an understanding that legal protection must adapt to social reality rather than impose uniformity through documentation alone.

The risk of over-certification where certificates are treated as self-sufficient sources of legitimacy has broader normative implications. If administrative documentation is allowed to override substantive relations systematically, land law may devolve into a mechanism of procedural domination. Rights holders without certificates, regardless of the legitimacy of their claims, may be excluded from protection. This outcome is difficult to reconcile with principles of equality before the law, especially where barriers to registration are structural rather than voluntary.

Judicial interpretation thus emerges as the decisive factor in determining whether land registration functions as a supportive evidentiary instrument or as an exclusionary threshold.

Courts that treat certificates as strong but rebuttable evidence preserve the stabilizing benefits of registration while maintaining openness to substantive justice. Courts that treat certificates as absolute risk transforming legal protection into a function of bureaucratic success rather than lawful entitlement. The absence of consistent doctrinal articulation contributes to uncertainty, as similarly situated parties may receive different outcomes depending on how judges balance administrative and substantive considerations.

A coherent interpretative approach requires clear calibration of evidentiary presumptions. Certificates should constitute the starting point of analysis, creating a presumption of correctness that supports administrative certainty and transactional stability. At the same time, the legal system must preserve meaningful avenues for rebuttal through substantive proof demonstrating prior rights, good-faith possession, lawful transactions, or customary recognition. Such calibration prevents opportunistic claims without sacrificing inclusivity and fairness.

Ultimately, the analysis demonstrates that land registration cannot be understood merely as a technical administrative process. Its legal significance is constructed through judicial interpretation that assigns meaning, weight, and consequence to certificates within the broader evidentiary landscape. When judicial reasoning acknowledges the declarative nature of registration and integrates substantive proof into its assessment, legal protection becomes more coherent, predictable, and just. This interpretative balance is essential to ensuring that land registration supports legal certainty without marginalizing legitimate land rights within Indonesia's pluralistic agrarian legal system.

This additional analysis reinforces the argument that land registration should not be understood merely as a technical administrative process, but as a normative instrument whose interpretation directly shapes the scope of legal protection within land law. When registration is treated as the primary determinant of the existence and enforceability of land rights, the legal system implicitly shifts its orientation from protecting lawful land relations to privileging procedural compliance. Such a shift risks transforming land law into an administrative filtering mechanism rather than a framework for safeguarding substantively legitimate rights.

In this configuration, land registration tends to function as a gatekeeper of legality rather than as an evidentiary support mechanism. Registered rights are accorded full legal legitimacy, while unregistered rights are often perceived as inherently weak or legally insignificant, regardless of their substantive foundation. This approach obscures the fundamental distinction between the existence of rights and the administrative documentation of those rights. As a result, legal protection becomes contingent upon bureaucratic success rather than upon the legality and legitimacy of the underlying land relationship.

This problem is particularly acute given the structural limitations of land registration systems. Non-registration does not necessarily reflect negligence or bad faith on the part of rights holders. In many cases, it is the consequence of systemic barriers, including geographic isolation, procedural complexity, administrative costs, and institutional limitations. Moreover, certain forms of land tenure especially those rooted in inheritance patterns, informal transactions, or customary recognition do not easily conform to standardized registration models. When legal protection is made dependent upon registration alone, these structural constraints are effectively transferred onto rights holders, producing outcomes that are difficult to justify from a normative perspective.

From the standpoint of legal protection theory, such outcomes undermine the very purpose of law. Legal protection is intended to prevent arbitrary deprivation of rights and to ensure that lawful interests are not extinguished through procedural formalism. Administrative mechanisms, including land registration, are designed to serve these objectives, not to override them. When registration is elevated to an absolute condition for

protection, administrative certainty is achieved at the expense of substantive justice, resulting in a form of legal certainty that is formally orderly but normatively deficient.

This imbalance also raises serious concerns regarding equality before the law. Access to land registration is uneven, influenced by socio-economic conditions, geographic location, and institutional capacity. If legal protection is exclusively tied to registration status, the law effectively privileges those with greater access to administrative resources while disadvantaging those whose rights are substantively valid but administratively undocumented. Such an outcome contradicts the principle that legal protection should attach to lawful relationships rather than to differential access to bureaucratic processes.

Accordingly, land registration must be repositioned within a declarative framework that recognizes its evidentiary and administrative character without allowing it to negate substantively legitimate rights. Registration should strengthen legal protection by enhancing clarity, publicity, and transactional security, but it should not operate as an exclusionary threshold that determines whether rights are legally worthy of protection. By maintaining this balance, the land registration system can contribute to legal certainty while remaining aligned with the broader normative objectives of justice and fairness.

Ultimately, land registration cannot be understood merely as a technical administrative process detached from the social and legal realities in which land relations are formed. Its legal significance is constructed through judicial interpretation that assigns meaning, evidentiary weight, and normative consequence to land certificates within a broader framework of proof. When judicial reasoning acknowledges the declarative nature of registration and integrates substantive evidence into its assessment, legal protection becomes more coherent, predictable, and responsive to justice. Such an interpretative balance is essential to ensuring that land registration supports legal certainty while remaining aligned with the protection of legitimate land rights within Indonesia's pluralistic agrarian legal system.

## CONCLUSION

This article has examined the legal protection of land rights holders beyond administrative registration by re-examining the declarative function of land registration within Indonesia's agrarian legal system. The analysis demonstrates that land registration, while essential for legal certainty and administrative order, should not be misconceived as the constitutive source of land rights. Rather, registration must be understood as an administrative and evidentiary mechanism that records and publicizes pre-existing substantive legal relations.

The findings reveal that an excessive reliance on registration status as the determinant of legal protection risks narrowing the scope of protection itself. When administrative registration is elevated to a constitutive requirement in practice, substantively valid land rights—arising from possession, inheritance, contractual relations, or customary recognition—may be excluded from protection solely due to procedural incompleteness. Such an approach shifts the function of land law away from safeguarding legitimate interests and toward enforcing bureaucratic compliance, thereby weakening its normative justification.

By reaffirming the declarative character of land registration, this study underscores the importance of maintaining a clear distinction between the existence of rights and the means by which those rights are evidenced. Legal protection should attach to the legitimacy of land relations rather than to their administrative form alone. Registration strengthens protection by enhancing clarity, publicity, and evidentiary certainty, but it should not be employed to negate rights that exist independently of administrative processes.

The analysis also highlights the structural implications of equating legal protection with registration status. Unequal access to registration mechanisms—caused by geographic,

institutional, and informational barriers—means that administrative formalism may disproportionately disadvantage certain groups, particularly rural communities and holders of customary land rights. In this context, a rigid registration-centered model risks entrenching inequality and undermining the principle of equality before the law.

From a doctrinal perspective, the study demonstrates that legal protection in land law must be grounded in substantive justice as well as administrative certainty. Legal certainty achieved at the expense of legitimate substantive rights produces outcomes that may be formally orderly but normatively unjust. A balanced approach requires that administrative objectives be aligned with the protective purpose of land law, ensuring that certainty and fairness operate as complementary, rather than competing, principles.

Judicial practice further confirms the necessity of this balance. While land certificates constitute strong evidence, judicial reasoning has, in several instances, recognized that registration does not automatically extinguish unregistered rights supported by substantive proof. However, inconsistency in judicial interpretation indicates the need for clearer normative guidance that consistently affirms the declarative-protective function of registration. Such coherence would enhance predictability while preserving justice in land dispute resolution.

Policy and regulatory implications drawn from this study emphasize that strengthening legal protection does not require abandoning land registration, but refining its function. Regulatory frameworks should explicitly affirm the evidentiary role of registration, improve procedural accessibility, and provide clear pathways for recognizing substantively valid unregistered rights. Moreover, land registration policies must be responsive to legal pluralism, accommodating customary and communal tenure systems without distorting their substantive characteristics.

In conclusion, land registration should be positioned as a supportive instrument within a broader framework of land governance that prioritizes legal protection, substantive justice, and social legitimacy. Reorienting land registration toward a declarative-protective model aligns administrative practice with the normative foundations of land law and enhances public trust in land institutions. By ensuring that legal protection extends beyond administrative registration, Indonesia's agrarian legal system can better respond to the realities of land relations while maintaining certainty, fairness, and inclusivity.

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