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PHILOSOPHICAL AND CONSTITUTIONAL CRITIQUE OF THE NEGATIVE PUBLICATION SYSTEM IN INDONESIAN LAND REGISTRATION

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Abstract

This study analyzes Indonesia's land registration system from a constitutional and philosophical perspective, focusing on the persistence of the negative publication system and its implications for legal certainty and social justice. By tracing the colonial genealogy of cadastral administration, the study demonstrates that land registration in Indonesia originated as a fiscal and declaratory instrument serving colonial state interests rather than as a mechanism for guaranteeing definitive land rights. This legacy continues to shape contemporary land administration, where registration records ownership claims without conferring final legal force, thereby institutionalizing systemic legal uncertainty. Using prescriptive doctrinal (normative) legal research, this study examines the 1945 Constitution, the Basic Agrarian Law (UUPA), and the regulatory framework governing land registration, supported by legal and philosophical scholarship. The analysis reveals a normative paradox within Article 19 of the UUPA: although land registration is mandated to ensure legal certainty, the negative publication system leaves land certificates perpetually vulnerable to *ex post* judicial annulment. As administrative decisions (*beschikkingen*), certificates possess formal validity but lack material finality, reducing legal certainty to conditional legality. The study further finds that the limited positive elements introduced by Government Regulation No. 24 of 1997, particularly Article 32(2), the principle of openness, and the doctrine of *rechtverwerking,* function only as conditional safeguards and fail to ensure legal finality in practice. From a constitutional standpoint, this system is incompatible with Articles 28D(1) and 33(3) of the 1945 Constitution and with the Pancasila principle of social justice. The novelty of this research lies in its integrated constitutional philosophical critique, which justifies reconstructing Indonesia's land registration system toward a positive publication model as a constitutional necessity to restore legal certainty, protect citizens' land rights, and strengthen public trust in land administration.

Keywords: *Land Registration System; Legal Certainty; Constitutional Law; Pancasila; Legal Philosophy.*

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1. Introduction

The land registration system in Indonesia cannot be separated from the historical genealogy of the formation of colonial cadastral institutions introduced by the Dutch East Indies government in the late nineteenth century.[1] In its early phase, the colonial cadastre was designed primarily as a fiscal and administrative instrument to support the interests of colonial state control, particularly for land tax collection *(landrente)* and the protection of colonial economic interests.[2] This orientation positioned land data collection not as a means of substantively protecting the rights of indigenous legal subjects, but rather as a mechanism for controlling and exploiting agrarian resources. Consequently, the colonial land

[1] Peter Burns, *The Leiden Legacy: Concepts of Law in Indonesia* (Brill, 2021).
[2] Tim Lindsey, ed., *Indonesia, Law and Society* (The Federation Press, 2008).

registration system developed a declaratory and administrative character, failing to provide final legal certainty regarding land ownership.[3]

This conceptual legacy was not entirely severed after Indonesia's independence. On the contrary, the basic characteristics of the colonial cadastre were further institutionalized within the negative publication system later adopted in national agrarian law.[4] This system maintains the logic that land registration does not create rights but merely records pre-existing rights, thereby relieving the state of full responsibility for the material accuracy of the registered juridical data.[5] Accordingly, the historical problem of land registration in Indonesia is not merely a matter of technical administration, but a paradigmatic issue rooted in the state's conception of the relationship between law, land, and citizens.[6]

Following independence, the Indonesian state normatively and constitutionally sought to reorient land registration as an instrument for the protection of citizens' rights. This commitment is explicitly affirmed in Article 19 of Law Number 5 of 1960 concerning Basic Agrarian Principles (the Basic Agrarian Law/UUPA), which obliges the state to conduct land registration to guarantee legal certainty of land rights.[7] Land certificates, as the final product of the registration process, are normatively intended to serve as proof of rights that provide legal certainty for their holders. Within the framework of a constitutional state governed by law, land certificates should not be understood merely as administrative documents, but as manifestations of state recognition and protection of the legal relationship between citizens and land objects.[8]

Nevertheless, the normative design of the land registration system as regulated by Government Regulation Number 24 of 1997 on Land Registration, as amended by Government Regulation Number 18 of 2021, reveals a structural contradiction with the objectives of Article 19 of the UUPA. The adoption of a negative publication system results in land certificates possessing evidentiary force only as strong evidence (strong evidence), but not as conclusive and final proof.[9] Certificates remain subject to challenge and annulment if another party can prove the existence of a supposedly stronger right, even if such a right is unregistered. This condition gives rise to a normative paradox: the state promises legal certainty through land registration, yet simultaneously and systemically allows legal uncertainty to persist.[10]

From a theoretical perspective, land certificates should possess a high degree of legal authority for at least three fundamental reasons.[11] First, a certificate is the product of a state administrative legal act issued by a competent authority in accordance with formal procedures prescribed by law. Second, the existence of a certificate reflects the principle of public trust, whereby citizens are entitled to rely on the validity of legal data managed and publicly disclosed by the state. Third, in a modern constitutional state, the protection of good-faith purchasers constitutes an essential element of legal certainty and

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3 Cornelis van Vollenhoven, *Het Adatrecht van Nederlandsch-Indië* (Brill, 2024).

4 Boedi Harsono, *Hukum Agraria Indonesia : Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi Dan Pelaksanaannya* (Jakarta: Djambatan, 1999).

5 Maria S.W. Sumardjono, *Tanah Dalam Perspektif Hak Ekonomi Sosial Dan Budaya* (Jakarta: Kompas Media Nusantara, 2008).

6 Daniel S. Lev, "Colonial Law and the Genesis of the Indonesian State," in *Law and Society in East Asia* (Routledge, 2017), 3–20.

7 Indonesia, "Undang-Undang Republik Indonesia Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria," 1960, https://peraturan.bpk.go.id/Details/51310/uu-no-5-tahun-1960.

8 Cees Fasseur, "Colonial Dilemma: Van Vollenhoven and the Struggle between Adat Law and Western Law in Indonesia," in *The Revival of Tradition in Indonesian Politics* (Routledge, 2007), 70–87.

9 Klaus Deininger and Gershon Feder, "Land Registration, Governance, and Development: Evidence and Implications for Policy," *The World Bank Research Observer* 24, no. 2 (2009): 233–266, https://doi.org/10.1093/wbro/lkp007.

10 Jaap Zevenbergen, "A Systems Approach to Land Registration and Cadastre," *Nordic Journal of Surveying and Real Estate Research* 1, no. 1 (2004): 11–24, https://journal.fi/njs/article/view/41503.

11 Ade Saptomo and B. F. Sihombing, "Certificate of Land Rights in the Legal Philosophy of Notary," *International Journal of Scientific Research and Management (IJSRM)* 8, no. 12 (2020): 297–309, https://doi.org/10.18535/ijsrm/v8i12.lla02.

distributive justice.[12] Therefore, when certificates fail to provide final legal protection, the legitimacy of the state as the guarantor of legal certainty becomes normatively and morally problematic.[13]

The structural weaknesses of the negative publication system have a direct impact on the principle of *rechtszekerheid* and substantive justice.[14] The legal uncertainty inherent in land certificates contradicts Article 28D paragraph (1) of the 1945 Constitution, which guarantees every person's right to fair legal certainty, as well as Article 33 paragraph (3) of the Constitution, which designates land as a strategic resource to be managed for the greatest prosperity of the people.[15] From the perspective of Pancasila legal philosophy, this condition is also inconsistent with the value of social justice embodied in the Fifth Principle, as a legal system that allows certificate holders to lose their land through lengthy and costly litigation processes, in fact, reinforces structural inequalities in land control and re-control.

Studies on Indonesia's land registration publication system consistently reveal a critical stance toward the weaknesses of the *negative publication system* that still dominates the current regime. Chairunisa, Handayani, and Karjoko *analyze the issue of legal certainty at an operational level through the administrative instrument of the Land Declaration Letter*. Their findings show that the negative character of the publication system causes land certificates not to have absolute evidentiary force, because the truth of both physical and juridical data remains open to challenge. However, this study remains in the technical administrative domain and does not extend its analysis to philosophical critique or the constitutional legitimacy of the system used.[16] In line with this, Apriani and Bur conduct a *normative-philosophical examination of the relationship between legal certainty and legal protection within Indonesia's negative publication system*. They assert that the negative publication system is not aligned with the ideal of legal certainty because the state does not guarantee the accuracy of the data presented in certificates. Although they indicate the need to shift toward a positive publication system, this study does not develop a systematic constitutional argument regarding the principles of the *rule of law* and the guarantee of citizens' rights.[17] Rionald Dimas reinforces a similar critique through the framework of legal certainty theory. He highlights that the negative publication system with positive tendencies, wherein certificates are strong but not absolute evidence, is *insufficient to achieve the legal certainty aimed for in Indonesia's agrarian legal framework*. Although his work contributes theoretically, it is limited to the perspective of legal certainty and does not integrate a deeper philosophical basis or critique of the legislature's rational choice of publication system.[18] From an empirical standpoint, the study by Safitri, Tyestas Alw, and Lumbanraja shows through field research that the implementation of a negative publication system with positive elements results in *weak guarantees of certificate certainty and a high potential for post-registration disputes*. Despite revealing tangible impacts in society, this research remains descriptive and does not offer a philosophical reconstruction or a constitutional assessment of the system's foundational weaknesses.[19] Similarly, Gusmara, Subekti, and Maharani examine legal protection in the negative publication system by emphasizing the function of positive elements as risk mitigation mechanisms. This article clarifies the limits of legal protection that the state

[12] James E. Herget, *Contemporary German Legal Philosophy* (University of Pennsylvania Press, 2017).

[13] Gunarto Gunarto et al., "Ideal Regulation of Land Registration Using Land Certificate as Evidence Based on Legal Certainty," *Saudi Journal of Humanities and Social Sciences* 8, no. 3 (2023): 67–71, https://doi.org/10.36348/sjhss.2023.v08i03.006.

[14] Kaelan Kaelan, *Revitalisasi Dan Reaktualisasi Pancasila Sebagai Dasar Filsafat Negara Dan Ideologi Dalam Memaknai Kembali Pancasila* (Yogyakarta: Penerbit Lima, 2007).

[15] Moh. Mahfud MD, *Politik Hukum Di Indonesia* (Jakarta: Rajagrafindo Persada, 2009).

[16] Arrum Chairunisa, I Gusti Ayu Ketut Rachmi Handayani, and Lego Karjoko, "Aspects of Legal Certainty of Land Declaration Letters as Guidelines for Land Registration with Negative Stelse," *International Journal of Educational Research & Social Sciences* 4, no. 6 (2023): 1085–92, https://doi.org/10.51601/ijersc.v4i6.731.

[17] Desi Apriani and Arifin Bur, "Kepastian Hukum Dan Perlindungan Hukum Dalam Sistem Publikasi Pendaftaran Tanah Di Indonesia," *Jurnal Bina Mulia Hukum* 5, no. 2 (2021): 220–39, https://jurnal.fh.unpad.ac.id/index.php/jbmh/article/view/11.

[18] Rionald Dimas, "Publikasi Pendaftaran Tanah Di Negara Indonesia Ditinjau Dari Teori Kepastian Hukum," *PROSIDING SERINA III 2021* 1, no. 1 (2021), https://journal.untar.ac.id/index.php/Pserina/article/view/16161.

[19] Fina Ayu Safitri, Lita Tyesta ALW, and Anggita Doramia Lumbanraja, "Akibat Hukum Penggunaan Sistem Publikasi Negatif Berunsur Positifdalam Pendaftaran Tanah Di Kota Semarang," *Notarius* 13, no. 2 (2020): 788–802, https://doi.org/10.14710/nts.v13i2.31167.

can provide, yet it accepts the negative publication framework as given without exploring its compatibility with substantive legal certainty or modern constitutionalism.[20] From the perspective of evidentiary law, Suhariono et al. reaffirm that land certificates under the prevailing system *serve as prima facie evidence but do not possess absolute evidentiary force*. While this strengthens the diagnosis of systemic weaknesses, the study does not extend beyond doctrinal analysis to examine the philosophical implications of the chosen system within Indonesia's Pancasila legal state.[21] Astharyna and Suyanto's work demonstrates that the problem of certificate certainty is fundamentally a *philosophical and normative systemic issue within the negative publication system*, identifying tension between formal legality and substantive justice due to the lack of state guarantees. However, their critique remains general and does not construct an argumentative framework about the state's constitutional obligations in land registration.[22] In contrast to evaluations that tend to be critical, Herdarezki advocates *affirmatively for a positive publication system as a breakthrough for achieving legal certainty*.[23] This contribution is significant as a system-level alternative, although it does not include an in-depth critique of the philosophical and constitutional weaknesses of the prevailing negative system. Silviana, Utama, and Ismail contribute a historical sociological analysis of the policy rationales behind the choice of Indonesia's negative publication system. Although this enriches contextual understanding, their approach remains largely descriptive and does not develop a normative critique of the constitutional consequences of this system preference.[24] Finally, Koes Widarbo highlights the urgency of transitioning to a positive publication system, especially to enhance legal certainty and investment competitiveness. However, this policy-oriented focus is not accompanied by a systematic philosophical and constitutional critique of the negative system as the structural root of Indonesia's land registration problems.[25]

Overall, the range of previous studies shows a consistent pattern of findings: Indonesia's negative land registration publication system presents serious weaknesses in guaranteeing legal certainty and legal protection. However, most studies have not progressed to the comprehensive philosophical and constitutional analyses required to articulate the legitimacy of the system or the normative direction toward a positive publication model. This highlights a research gap for developing conceptual critique and proposing alternative models grounded in *Pancasila legal state principles* and constitutional guarantees for citizens' land rights. Previous studies on Indonesia's land registration system have generally identified weaknesses in legal certainty arising from the application of a negative publication system with positive elements, whether through dogmatic, empirical, or normative-philosophical approaches. Nevertheless, these studies remain partial and have not comprehensively addressed the root of the problem. There has been no systematic analysis positioning the negative publication system with positive tendencies as an issue of rule of law legitimacy, tracing its colonial genealogy while simultaneously testing its compatibility with the constitutional objectives of land registration as mandated by Article 19 of the UUPA, Article 28D paragraph (1), and Article 33 paragraph (3) of the 1945 Constitution. A further research gap is evident in the absence of analyses integrating philosophical value critique, modern legal certainty theory, and Pancasila legal philosophy in assessing the rationality of maintaining the negative publication system in national agrarian law.

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[20] Gregorius Rianggi Gusmara, Rahayu Subekti, and Andina Elok Puri Maharani, "Analisis Perlindungan Hukum Atas Pendaftaran Tanah Dengan Sistem Publikasi Negatif Yang Berlaku Di Indonesia," *Jurnal Hukum Bisnis* 12, no. 5 (2023): 1–8, https://doi.org/10.47709/hukumbisnis.v12i05.2859.

[21] Agus Suhariono et al., "Sistem Publikasi Pendaftaran Tanah (Kajian Sistem Publikasi Negatif Bertendensi Positif)," *Notaire* 5, no. 1 (2022): 17–30, https://doi.org/10.20473/ntr.v5i1.21882.

[22] Vivin Astharyna Harysart and Suyanto Suyanto, "The Essence of Legal Certainty of Land Title Certificates in the Land Registration Publication System in Indonesia," *Journal of Law Science* 6, no. 1 (2024): 166–73, https://iocscience.org/ejournal/index.php/JLS/article/view/4580.

[23] Nadila Maysila Herdarezki, "Sistem Publikasi Tanah Positif (Terobosan Mewujudkan Kepastian Hukum Dalam Pendaftaran Tanah)," *Jurnal Pertanahan* 11, no. 2 (2021), https://jurnalpertanahan.stpn.ac.id/index.php/jp/article/view/88.

[24] Ana Silviana, Yos Johan Utama, and Nurhasan Ismail, "Preferability of the Positive-Characterized Negative Publication in Cadastral Registration in Indonesia," *Journal of Critical Reviews* 7, no. 7 (2020): 979–82.

[25] Koes Widarbo, "Realizing the Existence of Positive Publication System Land Registration in Indonesia," *International Journal of Advanced Multidisciplinary Research and Studies* 3, no. 3 (2023): 333–43, https://www.multiresearchjournal.com/arclist/list-2023.3.3/id-1232.

The novelty of this research lies in the construction of an integrated philosophical and constitutional critique of the negative publication system with positive tendencies in Indonesia's land registration regime. This study does not merely expose technical or normative weaknesses, but dismantles the system's value rationality and constitutional legitimacy by integrating legal philosophy,[26] theories of legal certainty and legal rationality,[27] and Pancasila legal philosophy, particularly the principle of social justice. Through this approach, land certificates are reconceptualized not merely as administrative documents, but as manifestations of state legal acts that should provide final, conclusive, and trustworthy legal protection for citizens.[28] The contribution of this research is theoretical, normative, and practical. Theoretically, it enriches agrarian law discourse by clarifying the relationship between land registration publication systems, rule of law legitimacy, and the protection of citizens' constitutional rights. Normatively, it provides an argumentative foundation for reconstructing land registration regulation from a negative publication system toward a positive publication system consistent with the 1945 Constitution and Pancasila values. Practically, it offers a conceptual framework for policymakers and land administration institutions in designing a land registration system capable of guaranteeing certificate legal certainty, protecting good faith purchasers, and strengthening public trust in the national land administration system.

2. Method

This study employs prescriptive doctrinal (normative) legal research, which aims not only to identify and analyze legal norms governing the negative publication system in Indonesian land registration, but also to formulate normative arguments concerning what the land registration system ought to be (*das sollen*) to align with legal certainty and constitutional guarantees of citizens' rights.[29] The focus of the research is directed toward assessing the philosophical rationality and constitutional compatibility of the negative publication system in light of the principles of the rule of law and social justice.[30] The data sources consist of secondary legal materials, systematically classified into primary, secondary, and tertiary legal materials, in accordance with doctrinal research methodology.[31] Primary legal materials include the 1945 Constitution of the Republic of Indonesia, particularly Article 28D paragraph (1) and Article 33 paragraph (3); Law Number 5 of 1960 on Basic Agrarian Principles, especially Article 19; and implementing regulations governing land registration.[32] Secondary legal materials comprise legal doctrines and scholarly literature on agrarian law, legal certainty, rule of law theory, and legal philosophy, while tertiary legal materials consist of legal dictionaries and reference works used to clarify legal concepts and terminology.[33] Legal materials are collected through library research and analyzed using qualitative normative analysis with statutory, conceptual, philosophical, and constitutional approaches in order to assess the coherence of existing norms while simultaneously formulating prescriptive recommendations for reconstructing a land registration system that better guarantees legal certainty within the framework of a Pancasila based rule of law.[34]

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[26] Herget, *Contemporary German Legal Philosophy*.
[27] Max Weber, "Bureaucracy," in *Social Theory Re-Wired* (Routledge, 2023), 271–76.
[28] Notonagoro Notonagoro, *Pancasila Secara Ilmiah Populer* (Jakarta: Pantjuran Tudjuh, 1975).
[29] Mike McConville, ed., *Research Methods for Law* (Edinburgh University Press, 2017).
[30] Bakaev Shakhriyor Bakhtiyorovich, "The Importance of Modern Mechanisms in Ensuring The Full Independence of The Administrative Court," *The American Journal of Political Science Law and Criminology* 05, no. 10 (2023): 53–57, https://doi.org/10.37547/tajpslc/Volume05Issue10-09.
[31] Terry Hutchinson, "Doctrinal Research: Researching the Jury," in *Research Methods in Law*, 2013, 15–41, https://doi.org/10.4324/9780203489352.
[32] Boedi Harsono, *Hukum Agraria Indonesia : Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi Dan Pelaksanaannya* (Jakarta: Penerbit Universitas Trisakti, 2020).
[33] Bryan A. Garner, ed., *Black's Law Dictionary*, 10th ed. (Thomson Reuters/West, 2014).
[34] Soerjono Soekanto, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Rajagrafindo Persada, 2007).

3. Results and Discussion

3.1. Colonial Genealogy and the Philosophical Foundations of the Negative Publication System

The Indonesian land registration system is deeply embedded in a colonial genealogy that privileges administrative convenience and fiscal rationality over substantive legal protection. During the Dutch colonial period, cadastral practices were primarily designed as instruments of governance and economic extraction, rather than as mechanisms to secure individual land rights.[35] The *Agrarische Wet* of 1870 institutionalized a selective cadastral regime that systematically excluded indigenous land tenure from formal registration, thereby entrenching a dualistic legal order. This colonial cadastral logic did not aim to produce legal certainty for right-holders but rather to render land legible for taxation and investment. Consequently, registration functioned as a descriptive record of land relations rather than a constitutive act of rights, laying the structural foundation for what would later be conceptualized as a negative publication system.[36] Philosophically, the negative publication system reflects a liberal formalistic conception of law in which the state deliberately limits its responsibility for the material truth of registered data. Under this paradigm, legal certainty is subordinated to procedural contestability: registration provides prima facie evidence of rights, yet remains perpetually vulnerable to rebuttal through judicial proceedings.[37] The certificate is thus reduced to an evidentiary instrument rather than a source of legal authority. Such a conception presupposes equality of arms among legal subjects, an assumption that collapses in societies marked by structural inequalities in access to documentation, legal representation, and adjudication. The persistence of this paradigm reveals the epistemic continuity between colonial legal rationality and contemporary land administration.[38]

Following independence, Indonesia formally repudiated colonial legal structures through the enactment of the Basic Agrarian Law of 1960. Normatively, the UUPA articulates a transformative vision of agrarian law grounded in social justice and state responsibility. This vision is explicitly manifested in Article 19 UUPA, which mandates land registration throughout Indonesian territory for the purpose of ensuring legal certainty.[39] However, the continued reliance on a negative publication system introduces a conceptual contradiction: while Article 19 presupposes the state's active role in guaranteeing certainty, the negative system systematically withholds state responsibility for the substantive correctness of registered rights.[40] This disjunction exposes a latent incoherence between the normative aspirations of postcolonial agrarian reform and the inherited technical architecture of land registration.[41] From a constitutional perspective, this contradiction becomes even more pronounced when examined in light of Article 28D paragraph (1) of the 1945 Constitution, which guarantees the right of every person to recognition, protection, and legal certainty before the law.[42] Legal certainty, in this constitutional sense, cannot be reduced to formal registration that remains perpetually defeasible. A land certificate that can be annulled at any time due to administrative or historical defects undermines the very essence of

[35] Mason C. Hoadley, "The Leiden Legacy: Concepts of Law in Indonesia (Review)," *Sojourn: Journal of Social Issues in Southeast Asia* 21, no. 1 (2006): 124–28, https://doi.org/10.1353/soj.2006.0007.
[36] Burns, *The Leiden Legacy: Concepts of Law in Indonesia*.
[37] Ben Golder, "Foucault and the Incompletion of Law," *Leiden Journal of International Law* 21, no. 3 (2008): 747–63, https://doi.org/10.1017/S0922156508005293.
[38] Duncan Kennedy, "The Stakes of Law, or Hale and Foucault!," *Legal Studies Forum* XV, no. 4 (1991): 327–66, https://duncankennedy.net/wp-content/uploads/2024/01/the-stakes-of-law-or-hale-and-foucault-_-j-leg-stud.pdf.
[39] Abdul Wahid and Adi Sulistiyono, "Justification for The Establishment of A Land Court In Indonesia: Realizing Justice in Land Dispute Resolution," *Masalah-Masalah Hukum* 54, no. 2 (2025): 179–213, https://doi.org/10.14710/mmh.54.2.2025.179-213.
[40] Nicholas Sergeyevitch Timasheff, *An Introduction to the Sociology of Law* (Routledge, 2017).
[41] Benjamin Davy, *Land Policy: Planning and the Spatial Consequences of Property* (Routledge, 2016).
[42] Jimly Asshiddiqie, *Hukum Tata Negara Dan Pilar-Pilar Demokrasi* (Jakarta: Konstitusi Press, 2005).

constitutional protection.[43] The negative publication system thus risks transforming land registration into a procedural ritual devoid of substantive constitutional meaning, failing to meet the threshold of certainty demanded by constitutional rule of law.[44]

Critically examined, the endurance of the negative publication system represents not merely a technical choice but a philosophical failure to complete the decolonization of legal epistemology.[45] By maintaining a system that externalizes risk to citizens while insulating the state from liability, Indonesian land law perpetuates a colonial logic incompatible with Pancasila-based constitutionalism. In a legal order that aspires to social justice and substantive equality, the state cannot remain a passive registrar of contested rights.[46] Rather, it must assume a guarantor function commensurate with Article 19 UUPA and Article 28D(1) of the Constitution. The unresolved tension between inherited colonial structures and constitutional commitments thus provides a compelling normative basis for re-evaluating the negative publication system in Indonesian land registration.[47]

3.2. Constitutional Mandate of Land Registration and the Normative Paradox of Legal Certainty

Article 19 of the Basic Agrarian Law constitutes a central normative pillar of Indonesia's land law system by mandating land registration across the national territory for the explicit purpose of ensuring legal certainty. This provision reflects a constitutional aspiration to transform land registration from a mere administrative record into a legal instrument capable of stabilizing land relations and preventing disputes. Implicit in this mandate is the expectation that the state assumes an active role in producing reliable legal facts, rather than merely documenting contested claims.[48] Thus, Article 19 UUPA embodies a teleological commitment to legal certainty that exceeds procedural regularity and demands substantive trustworthiness of registered land rights.[49]

From a constitutional law perspective, the objective of land registration under Article 19 UUPA must be interpreted in light of Article 28D paragraph (1) of the 1945 Constitution, which guarantees the right to legal recognition, protection, and certainty before the law.[50] Legal certainty in this constitutional sense is not merely formal, but substantive and rights-oriented. It presupposes that state-issued legal instruments, including land certificates, can be relied upon by citizens without perpetual fear of annulment. Consequently, land registration serves as a constitutional mechanism through which the state fulfills its obligation to protect property-related rights, thereby reinforcing the principle of the rule of law (*Rechtsstaat*).[51] Within this framework, a land certificate must be understood as a form of state administrative legal act (*beschikking*) issued by a competent authority through the land registration process. As an administrative decision, the certificate carries a presumption of legality (*vermoeden van rechtmatigheid*), meaning it is

[43] Jorge A. Rodríguez Pérez, "Rule of Law, Legal Certainty And Economic Development: Freedom of Enterprise in The Spanish Constitution," *Legal and Administrative Studies* 28, no. 1 (2023): 37–54, https://www.upit.ro/_document/299058/jlas_1_2023_ultim.pdf#page=37.

[44] Aurelien Portuese, Orla Gough, and Joseph Tanega, "The Principle of Legal Certainty as a Principle of Economic Efficiency," *European Journal of Law and Economics* 44 (2017): 131–156, https://doi.org/10.1007/s10657-014-9435-2.

[45] Herget, *Contemporary German Legal Philosophy*.

[46] Notonagoro Notonagoro, *Pancasila Dasar Falsafah Negara* (Rineka Cipta, 1998).

[47] Wolfgang Friedmann, *Law in a Changing Society* (Univ of California Press, 2023).

[48] Sugina Hidayanti, Indra Koswara, and Yopie Gunawan, "The Land Legal System in Indonesia and Land Rights According to the Basic Agrarian Law (UUPA)," *Legal Brief* 11, no. 1 (2021): 366–378, https://legal.isha.or.id/index.php/legal/article/view/135.

[49] Maria S.W. Sumardjono, *Kebijakan Pertanahan : Antara Regulasi Dan Implementasi* (Jakarta: Kompas, 2001).

[50] Asshiddiqie, *Hukum Tata Negara Dan Pilar-Pilar Demokrasi*.

[51] Rodríguez Pérez, "Rule of Law, Legal Certainty And Economic Development: Freedom of Enterprise in The Spanish Constitution."

deemed valid and enforceable until annulled by a court.[52] This presumption is a cornerstone of administrative law, designed to protect legal stability and public trust in state action. Accordingly, the issuance of a land certificate should, in principle, generate legitimate expectations for right-holders that their land rights are secure and legally protected.[53]

However, the adoption of a negative publication system introduces a structural contradiction within this constitutional and administrative framework. Under the negative system, land certificates function only as strong but rebuttable evidence, allowing third parties to challenge registered rights based on prior or competing claims.[54] This design effectively suspends the finality of administrative decisions and shifts the risk of error from the state to individual right holders. As a result, the presumption of legality attached to the certificate is substantially weakened, undermining its function as a stabilizing legal instrument. The certificate thus oscillates between administrative authority and evidentiary fragility, producing systemic uncertainty.[55] This contradiction gives rise to a normative paradox: while land registration is constitutionally mandated to ensure legal certainty, the negative publication system structurally tolerates uncertainty as an inherent feature. Legal certainty is proclaimed as an objective, yet the institutional design refuses to conclusively settle land rights.[56] From a philosophical standpoint, this paradox reflects a tension between formal legality and substantive justice, where procedural correctness is prioritized over the protection of legitimate expectations. In practice, this paradox disproportionately affects vulnerable groups who lack the resources to defend their rights in protracted litigation, thereby exacerbating inequality before the law.[57]

Ultimately, the persistence of this normative paradox signals a failure to fully constitutionalize land registration in Indonesia. By maintaining a system that dilutes state responsibility for the accuracy and finality of land data, the legal order falls short of the constitutional promise enshrined in Article 28D(1) of the 1945 Constitution and the statutory mandate of Article 19 UUPA. Resolving this paradox requires a paradigmatic shift in the conception of land registration from a risk neutral administrative function to a constitutionally grounded guarantee of legal certainty.[58] Such a shift provides the normative foundation for critically reassessing the continued reliance on a negative publication system in Indonesian land law.[59]

These conditions are further clarified by the practice of administrative courts, particularly through numerous decisions of the Administrative Courts (PTUN) and the Supreme Court, which have consistently annulled land title certificates despite the fact that such certificates were formally issued by the National Land Agency. One of the dominant patterns of annulment concerns the duplication of land parcels or the issuance of certificates over land that had previously been registered. This pattern is reflected, inter alia, in Decision No. 151/G/2022/PTUN.Mdn[60] and Decision No. 19/G/2023/PTUN.Ptk,[61] in which the certificates were

[52] Olli Mäenpää and Niels Fenger, "Public Administration and Good Governance," in *Nordic Law in European Context* (Springer, 2018), 163–78, https://doi.org/10.1007/978-3-030-03006-3_10.

[53] Aju Putrijanti, "Jurisprudence of State Administrative Courts in The Development of State Administrative Law," *Jurnal Penelitian Hukum De Jure* 21, no. 2 (2021): 161–174, https://lawpolicyjournal.id/index.php/https:/lawpolicyjournal.id/index.php/dejure/article/view/1655.

[54] Ernst Utrecht, *Pengantar Hukum Administrasi Negara Indonesia* (Jakarta: Ichtiar Baru, 1990).

[55] Frederick F. Schauer, *Thinking Like a Lawyer: A New Introduction to Legal Reasoning* (Harvard University Press, 2009).

[56] Herget, *Contemporary German Legal Philosophy*.

[57] Ade Arif Firmansyah, "Factual Reflection of Pancasila as The Basis of The State: Unifier and Defense of The Indonesian Nation," *Progressive Law Review* 4, no. 02 (2022): 79–83, https://doi.org/10.36448/plr.v4i02.89.

[58] Anak Agung Istri Agung et al., "Legal Protection and Legal Certainty in Indonesia's Land Title Registration System," *Jurnal Akta* 9, no. 4 (2022): 524–40, https://jurnal.unissula.ac.id/index.php/akta/article/view/35387.

[59] Robert W. Hefner, ed., *Shari'a Politics: Islamic Law and Society in the Modern World* (Indiana, USA: Indiana University Press, 2011).

[60] PTUN Medan, "Putusan Nomor: 151/G/2022/PTUN.Mdn" (Mahkamah Agung RI, 2023).

[61] PTUN Pontianak, "Putusan PTUN PONTIANAK Nomor 19/G/2023/PTUN.PTK" (Mahkamah Agung RI, 2023), https://103.226.55.88/direktori/putusan/zaee8767688a5e5c9c27313234313130.html.

declared legally defective because they were issued without prior public announcement at the village level, and resulted in overlapping land parcel maps. The judicial panels considered such practices to constitute violations of the precautionary principle and the principle of legal certainty in land registration, with the consequence that the physical data recorded in the certificates did not reflect the actual situation and therefore lost their evidentiary force as stipulated in Article 32 paragraph (1) of Government Regulation No. 24 of 1997.[62] Furthermore, in cases involving such duplication, the judicial panels also rejected the application of the five-year legal protection provided under Article 32 paragraph (2) of Government Regulation No. 24 of 1997.[63] The courts reasoned that this protective provision applies only where a certificate has been lawfully issued and the holder acts in good faith. Since duplicative certificates are, from the outset, burdened by administrative and procedural defects, they never attain the status of strong evidence in juridical terms. This pattern of reasoning confirms that, under the negative publication system, the administrative legality of land certificates is never final; consequently, legal certainty remains contingent and may be annulled *ex post facto* through judicial mechanisms.[64]

Beyond land parcel duplication, certificate annulment is also systematically found in cases arising from the absence of valid underlying rights (*alas hak*) or the lack of a lawful deed of transfer. This is evident in Decision No. 14/B/2021/PTTUN.MKS,[65] Decision No. 8/G/2022/PTUN.Mdo,[66] and Decision No. 81/G/2023/PTUN.SBY.[67] In these cases, certificate applicants were unable to prove the existence of a valid deed of sale and purchase, grant, or other legally recognized form of rights transfer. The judicial panels held that the issuance of certificates without valid underlying rights constituted a violation of the principle of legality and the precautionary principle, thereby rendering the certificates null and void by operation of law.[68] In these cases, judges consistently emphasized that the invalidity of juridical data causes land certificates to lose their evidentiary strength as provided under Article 32 paragraph (1) of Government Regulation No. 24 of 1997. Moreover, because certificate holders could not be qualified as parties acting in good faith, the legal protection afforded by Article 32 paragraph (2) was likewise inapplicable.[69] Consequently, certificates unsupported by valid underlying rights are normatively placed outside the protective regime of land registration law. This line of reasoning demonstrates that legal protection under the negative publication system is highly limited and conditional, thereby failing to deliver the legal certainty promised by Article 19 of the Basic Agrarian Law.[70] A similar pattern of annulment appears in cases involving measurement defects and violations of the principle of transparency, as reflected in Decision No. 173/G/2015/PTUN.Bdg[71] (which became final and binding in 2021) and Decision No.

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62 Laurens Bakker, "Agrarian Justice and Indonesian Law," in *SHS Web Conferences, Volume 54, 2018, The 1st International Conference on Law, Governance and Social Justice (ICoL GaS 2018)*, 2018, https://doi.org/10.1051/shsconf/20185403020.

63 Sumardjono, *Kebijakan Pertanahan : Antara Regulasi Dan Implementasi*.

64 Davy, *Land Policy: Planning and the Spatial Consequences of Property*.

65 Davy.

66 PTUN Manado, "Putusan Nomor: 8/G/2022/PTUN.Mdo" (Mahkamah Agung RI, 2022), https://www.scribd.com/document/892194483/putusan-8-g-2022-ptun-mdo-20250724000823.

67 PTUN Surabaya, "Putusan PTUN SURABAYA Nomor 81/G/2023/PTUN.SBY" (Mahkamah Agung RI, 2023).

68 Sediono M.P. Tjondronegoro, "Land Policies in Indonesia," 2003, https://documents1.worldbank.org/curated/en/777651468260378738/txt/374350IND0Land0policies1PUBLIC1.txt.

69 Ratna D.E Sirait and Tiromsi Sitanggang, "Land Registration Derived from Customary Land According to Government Regulation Number 24 of 1997," *The International Journal of Humanities & Social Studies* 11, no. 6 (2023): 46–56, https://doi.org/10.24940/theijhss/2023/v11/i6/HS2306-010.

70 Rizki Aprido and Fatimah Fatimah, "The Resolution of Customary Community Land Rights Issues Based on Government Regulation No. 18 of 2021 and Its Relevance to the Constitution in Indonesia," *Jurnal EDUCATIO: Jurnal Pendidikan Indonesia* 9, no. 2 (2023): 893–902, https://doi.org/10.29210/1202323279.

71 PTUN Bandung, "Putusan PTUN BANDUNG Nomor 173/G/2015/PTUN-BDG" (Bandung, 2016), https://putusan3.mahkamahagung.go.id/direktori/putusan/52c5878e8c70e7fde7eb854a57916e33.html.

2/G/2023/PTUN.PLK.[72] In these cases, remeasurement of land parcels was conducted without involving adjacent landowners or other legally interested parties. The judicial panels considered such actions to violate the principle of transparency and the right of parties to be heard (*audi et alteram partem*), rendering the measurement results unlawful and incapable of serving as a valid basis for certificate issuance.[73] As a result of these procedural defects, the physical data recorded in the certificates were deemed inaccurate, causing their evidentiary force under Article 32 paragraph (1) of Government Regulation No. 24 of 1997 to lapse. Because such measurement defects were regarded as inherent defects of legality, the legal protection under Article 32 paragraph (2) was likewise inapplicable.[74] These decisions affirm that, in judicial practice, any procedural violation in land registration is treated as a legitimate ground for negating the legal certainty of land certificates, even where such certificates have been issued for a considerable period of time.

In other cases involving land control by local governments without a lawful legal basis, as seen in Decision No. 3/G/2022/PTUN.Dps[75] and Decision No. 37/G/2023/PTUN.Pbr,[76] judicial panels emphasized that the state or local government does not automatically acquire legal legitimacy over land under its control. Land occupation conducted without lawful acquisition or transfer mechanisms was deemed to violate the civil rights of owners or heirs. Accordingly, the juridical data underlying such land control were declared invalid and failed to meet the evidentiary standards outlined in Article 32 paragraph (1). Moreover, because such land control was carried out without good faith and without a lawful legal basis, the legal protection under Article 32 paragraph (2) of Government Regulation No. 24 of 1997 was likewise inapplicable. These decisions demonstrate that even the state may be positioned as a legal subject excluded from the protection of the land registration regime when it acts in violation of the principle of legality.[77] This reinforces the thesis that the negative publication system fails to provide symmetrical legal certainty, both for citizens and for the state itself.

Finally, certificate annulment is also found in cases involving the use of falsified documents or the absence of actual possession of land, as reflected in Decision No. 59/G/2022/PTUN.Pbr[78] and Decision No. 115/G/2023/PTUN.Mdn.[79] In these cases, certificates were issued on the basis of incorrect documents, and the certificate holders did not exercise actual control over the land. The judicial panels held that such circumstances contravened the principles of legality and legal certainty, rendering the certificates invalid and devoid of evidentiary force.[80]

Overall, this mapping of decisions of the Administrative Courts and the Supreme Court demonstrates that land title certificates under the negative publication system consistently exist in a condition of *conditional legality*. The legal certainty promised by Article 19 of the Basic Agrarian Law (UUPA) and Article 28D paragraph (1) of the 1945 Constitution is systematically eroded by a normative design that allows for annulment without an effective temporal limitation. Judicial practice thus becomes the clearest mirror of the normative paradox of land registration in

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72 PTUN Palangkaraya, "Putusan PTUN PALANGKARAYA Nomor 2/G/2023/PTUN.PLK" (Mahkamah Agung RI, 2023).

73 Philipus M. Hadjon, *Pengantar Hukum Administrasi Indonesia : Introduction to the Indonesian Administrative Law* (Yogyakarta: UGM Press, 2008).

74 Ricco Survival Yubaidi, "The Role of Land Deed Official Regarding Legal Certainty of Complete Systematic Land Registration," *Jurnal Hukum Dan Peradilan* 9, no. 1 (2020): 27–42, https://doi.org/10.25216/jhp.9.1.2020.27-42.

75 PTUN Denpasar, "Putusan PTUN DENPASAR Nomor 3/G/2022/PTUN.DPS," 2022, https://sipp.ptun-denpasar.go.id/detil_perkara.

76 PTUN Pekan Baru, "Putusan PTUN PEKAN BARU Nomor 37/G/2023/PTUN.PBR" (Pekan Baru, 2024), https://putusan3.mahkamahagung.go.id/direktori/putusan/zaef02dad2fc10b68890313530373133.html.

77 Anwar Usman, "The Role of Indonesian Constitutional Court in Strengthening Welfare State and the Rule of Law," *Lex Publica* 7, no. 1 (2020): 11–27, https://journal.appthi.org/index.php/lexpublica/article/view/103.

78 PTUN Pekan Baru, "Putusan PTUN PEKAN BARU Nomor 59/G/2022/PTUN.PBR" (Pekan Baru, 2023), https://meridianhukum.com/putusan/44b65700-4b47-4bb2-b532-82488ae06c37.

79 PTUN Medan, "Putusan PTUN MEDAN Nomor 115/G/2023/PTUN.MDN" (Mahkamah Agung RI, 2024).

80 Herget, *Contemporary German Legal Philosophy*.

Indonesia: legal certainty is proclaimed as an objective, yet legal uncertainty is institutionalized as a permanent corrective mechanism.

3.3. Positive Elements within the Negative Publication System: Article 32 PP No. 24/1997, Openness, and *Rechtverwerking*

Despite widespread critique of the negative publication system under Indonesian land law, there exist limited positive doctrinal elements within Government Regulation No. 24 of 1997 that arguably mitigate inherent risks of legal uncertainty.[81] One such element is Article 32 paragraph (2), which introduces a form of *rechtsverwerking,* a legal doctrine aimed at constraining the capacity of third parties to challenge a land certificate after certain conditions are met. Article 32(2) stipulates that where a land certificate has been legally issued in the name of a person or legal entity that acquired and controlled the land in good faith, another party may no longer assert competing rights if no written objection or legal challenge has been filed within five years of issuance. This provision functions as an exception to the perpetual vulnerability of certificates in a negative system, attempting to balance the openness of challenges with temporal limits on contestation.[82]

Relatedly, the PP 24/1997 explicitly embeds transparency as a fundamental principle of land registration. Article 2 of the Regulation (echoing UUPA objectives) mandates principles including simplicity, safety, affordability, currency, and transparency (openness) in land registration procedures.[83] This principle requires that physical and juridical data be maintained and made accessible, enabling public scrutiny of cadastral information and ownership records. The openness of the land registry serves a dual purpose: it allows third parties to be informed of registered rights (thus preventing unknown encumbrances), while also empowering certificate holders to assert rights with transparency as a normative value. Such transparency inherently strengthens legal certainty by reducing informational asymmetry and enhancing the predictability of land status.[84]

The doctrine of *rechtsverwerking,* originally derived from customary law and integrated into Indonesian land law practice, constitutes another positive, albeit conditional, corrective within the negative publication framework. *Rechtsverwerking* posits that when a certificate holder has held and controlled land openly and in good faith for a prescribed period without objection, subsequent claims may be barred, reflecting equitable considerations of fairness and *estoppel*. While not uniformly applied by courts, the doctrine acknowledges that legal certainty may be enhanced where delay or acquiescence undermines the legitimacy of later challenges. In this respect, Article 32(2) functions as a statutory embodiment of *rechtsverwerking*, even if its application remains inconsistent in jurisprudence.[85]

Nevertheless, the positive impact of these elements is circumscribed by the inherent logic of the negative publication system: certificates remain rebuttable on material grounds, and *rechtsverwerking* applies only where strict conditions (good faith, actual possession, non-objection for five years) are met. Moreover, *rechtsverwerking* has not evolved into a dominant mode of adjudication, partly because courts often prioritize immediate evidentiary challenges over temporal bars. Empirical studies show that courts rarely invoke Article 32(2), even when

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[81] Rizal Iskandar Soewito and Gunawan Djajaputra, "Legal Certainty For Holders of Land Rights Over The Issuance of Multiple Certificates," *Journal of Law, Politic and Humanities* 4, no. 4 (2024): 854–60.

[82] Anis Mashdurohatun et al., "Registration of Transfer of Land Rights in the Justice-Based Indonesian Legal System," *Scholars International Journal of Law, Crime and Justice* 6, no. 4 (2023): 209–15, https://doi.org/10.36348/sijlcj.2023.v06i04.003.

[83] Airin Rachmi Diany et al., "E-Land Registration System in Indonesia: Policy, Progress, and Challenges," *International Journal of Public Law and Policy* 10, no. 4 (2024): 411–29, https://doi.org/10.1504/IJPLAP.2024.141713.

[84] Muhammad Reza Zulfikar, "The Nature of The Application of Legal Justice to The Systematics of Land Registration According to Government Regulation Number 24 of 1997," *Golden Ratio of Data in Summary* 4, no. 2 (2024): 201–204, https://doi.org/10.52970/grdis.v4i2.470.

[85] Agus Sekarmadji, Oemar Moechthar, and Wilda Prihatiningtyas, "Rechtsverwerking in Indonesia: How Land Ownership Can Be Lost Under Customary Law," *PETITA: Jurnal Kajian Ilmu Hukum Dan Syariah* 10, no. 2 (2025): 926–48, https://doi.org/10.22373/petita.v10i2.836.

conditions arguably fit its purpose, thus limiting its practical contribution to legal certainty.[86] This conditional nature underscores that while Article 32(2), openness, and *rechtsverwerking* introduce positive doctrinal features within PP 24/1997, they do not fully compensate for the structural weaknesses of the negative publication system in delivering conclusive legal certainty for certificate holders.[87]

In sum, Article 32(2) as a form of *rechtsverwerking*, together with statutory principles of openness, represents modest positive elements embedded in PP 24/1997 that are intended to temper the uncertainties of the negative publication system. However, their effectiveness remains conditional and limited in scope, as evidenced by their sporadic invocation in academic literature and court practice.[88] Future reform debates, therefore, engage with these elements as starting points for designing a more robust system that integrates transparency, equitable limitations on challenges, and greater state responsibility for certifying data, bridging the gap between the system's normative aspirations and its practical performance.[89]

3.4. Constitutional and Philosophical Assessment of Legal Certainty and Social Justice

The Indonesian constitutional framework enshrines legal certainty and social justice as normative pillars of the national legal order. Article 28D(1) of the 1945 Constitution guarantees that *"everyone shall have the right of recognition, guarantees, protection and fair legal certainty, and equal treatment before the law,"* a provision that not only echoes classical rule of law values but also embeds those values within the constitutional human rights order.[90] This formulation places legal certainty beyond a mere procedural formality: it requires that state action in law not only be predictable and systematic, but also fair in its substantive outcomes. The Constitutional Court has reiterated that legal certainty is a central component of the *Rechtsstaat* ideal in Indonesia, requiring law to be clear, accessible, and equitable in application. The constitutional guarantee thus sets a constitutional intensity that must inform all aspects of law, including land registration practice.[91] At the same time, the Constitution embeds social justice as a foundational principle of the Indonesian state. Article 33(3) of the 1945 Constitution specifies that *"the land, waters, and natural resources shall be under the powers of the state and shall be utilized for the greatest welfare of the people."* This provision extends beyond mere economic policy; it functions as a constitutional directive for equitable distribution, collective welfare, and non-arbitrary allocation of natural resources, including land.[92]

The philosophical intention of Article 33(3) aligns with the broader Pancasila legal culture, especially the Fifth Principle of Pancasila ("social justice for all Indonesian people"), which demands that the law's utility and justice be integrated with legal certainty, not subordinated to it. In this sense, legal certainty in land law cannot be judged solely by formal administrative

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[86] E Herawati, "The Implementation of Rechtsverwerking Principle in Indonesia Land Register," in *The 1st Workshop on Multimedia Education, Learning, Assessment and Its Implementation in Game and Gamification in Conjunction with COMDEV 2018, WOMELA-GG* (Medan, 2019), https://doi.org/10.4108/eai.26-1-2019.2283266.

[87] Arief Rahman Hakim, "Lembaga Rechtsverwerking Dalam Sistem Pendaftaran Tanah Di Indonesia," *Jatiswara* 27, no. 1 (2012): 72–95, https://jatiswara.unram.ac.id/index.php/js/article/view/26.

[88] Suharyono Suharyono, "Legal Assurance and Legal Protection in Land Registration in Indonesia," *Sriwijaya Law Review* 3, no. 1 (2019): 48–58, https://doi.org/10.28946/slrev.Vol3.Iss1.118.pp48-58.

[89] Ragil ibnu Hajar and Surizki Febrianto, "Reconstruction of Land Registration Law in Realising Justice Value-Based Agrarian Reform," in *International Conference on Law and Social Sciences*, 2024, https://journal.uir.ac.id/index.php/icolss/article/view/18749.

[90] Sultan Alwan, "Interpretation of Freedom of Contract to the Decision of the Constitutional Court of the Republic of Indonesia," *Khairun Law Journal* 2, no. 1 (2018): 13–21, https://doi.org/10.33387/klj.v2i1.1887.

[91] Constitutional Court of The Republic of Indonesia, "Decision Number 77/PUU-XIV/2016," 2016, https://en.mkri.id/download/decision/decision_2563_20180219113641_77PUU-XIV2016.pdf.

[92] Ahmad Valdo Rizky et al., "State Authority in Land Control: Constitutional Analysis of The Implementation of Article 33 Paragraph 3 of The 1945 Constitution," *Awang Long Law Review* 8, no. 1 (2025): 290–96, https://doi.org/10.56301/awl.v8i1.1865.

predictability; it must be measured against its substantive contribution to social justice.[93] Modern legal theory suggests that legal certainty and justice are not always congruent, creating inherently paradoxical demands on any legal system. Classical positivism, as represented by Kelsen,[94] prioritizes the formal certainty of law: law must be systematized, authoritative, and applied according to neutral, written rules. However, critiques from philosophers such as Gustav Radbruch argue that when legal certainty produces substantively unjust outcomes, justice must temper formalism.[95] Legal systems that over-prioritize formal certainty risk degenerating into *antinomies* where the letter of law undermines its moral legitimacy.[96] In the context of land registration, this theoretical tension is particularly salient: formal certainty may conflict with justice outcomes, demonstrating the limits of legal certainty divorced from justice.[97]

Within the Pancasila legal philosophy, the ideal of law transcends pure positivism by integrating moral, cultural, and social values into the legal framework. The dialectic between legal certainty and substantive justice in Pancasila jurisprudence reflects a holistic *Rechtsstaat* paradigm that emphasizes the ethical role of law as an instrument of welfare, not just procedural regulation.[98] Under this paradigm, legal certainty must serve justice, and not displace it. For instance, mere administrative regularity in land registration would be insufficient if it perpetuates socio-economic inequities, dispossession, or marginalization. The Pancasila *Rechtsstaat* thus requires that land law practice be evaluated not only in terms of formal predictability but also in terms of whether it advances equitable access and distributive justice.[99]

Assessing the negative publication system through these constitutional and philosophical lenses reveals structural inadequacies. The system prioritizes formal certainty, often to the detriment of substantive justice, because it treats land certificates as administratively entrenched yet still perpetually contestable. This condition produces a fragile legal certainty that contradicts Article 28D(1)'s promise of fair legal protection and equal treatment, and Article 33(3)'s mandate that land governance must aim at *people's welfare*.[100] When legal certainty is detached from outcomes that promote social justice, the system fails both its constitutional obligations and Pancasila's ethos. Legal certainty in Indonesian land law must therefore be reconstructed to reconcile procedural predictability with equitable substantive outcomes.[101]

Legal certainty should not function as an isolated formalistic value, but rather as an integral element of a triadic relationship with justice and utility. Where uncertainty in land rights disproportionately disadvantages socially vulnerable groups, rigid adherence to procedural

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93 R. Gatot Prio Utomo and Heliaantoro Heliaantoro, "Implementation of Article 33 Paragraphs 2 and 3 of the 1945 Constitution in Granting Concessions for Natural Resource Management to Foreign Companies from International Private Law Perspective: A Case Study of PT XYZ," *Greenation International Journal of Law and Social Sciences* 2, no. 2 (2024): 26–39, https://doi.org/10.38035/gijlss.v2i2.202.

94 Hans Kelsen, *General Theory of Law and State* (Routledge, 2017).

95 FX. Joko Priyono, "Bridging Law and Morality Principles: Legal Theory Approach," *Pakistan Journal of Life and Social Sciences* 22, no. 2 (2024): 24417–25, https://doi.org/10.57239/PJLSS-2024-22.2.001744.

96 Gustav Radbruch, "Statutory Lawlessness and Supra-Statutory Law (1946)," *Oxford Journal of Legal Studies* 26, no. 1 (2006): 1–11, https://doi.org/10.1093/ojls/gqi041.

97 Gregorius Widiartana and Sajjad Hussain, "Judicial Pardon in Contemporary Criminal Verdicts: Balancing Justice, Legal Certainty, and the Utility of Law," *Nusantara: Journal of Law Studie* 4, no. 1 (2025): 1–11, https://doi.org/10.5281/zenodo.17346796.

98 Notonagoro, *Pancasila Dasar Falsafah Negara*.

99 Elviandri Elviandri et al., "The Dialectic of Positivism and Substantive Justice: The Pancasila Rule of Law Paradigm," *Judge : Jurnal Hukum* 6, no. 04 (2025): 1011–20, https://journal.cattleyadf.org/index.php/Judge/article/view/1777.

100 Abdul Wahid, I Gusti Ayu Ketut Rachmi Handayani, and Lego Karjoko, "Legal Politics of Changes in Land Ownership Rights Regulations Post Omnibus Law Based on Pancasila Justice," in *Proceedings of the International Conference On Law, Economic & Good Governance (IC-LAW 2023)* (Atlantis Press, 2024), 339–45, https://doi.org/10.2991/978-2-38476-218-7_57.

101 Salomo Jitmau, Sokhib Naim, and Muh Akhdharisa SJ, "Implementation of the Principle of Equality Before the Law in the Dynamics of Indonesian Law," *JUSTITI* 11, no. 2 (2025): 441–455, https://doi.org/10.33506/js.v11i2.4088.

formalism risks undermining the State's constitutional obligation to guarantee equitable access to land as a foundation for livelihood and meaningful social participation. In sum, both constitutional and philosophical analysis suggest that the negative publication system must be reconceptualized so as to embody a Pancasila-aligned equilibrium, in which legal certainty operates not as an end in itself, but as an instrument that advances rather than impedes the realization of social justice for all.[102]

3.5. Toward a Constitutionally and Philosophically Justifiable Reconstruction of Land Registration

The cumulative analysis of constitutional guarantees, judicial practice, and legal theory demonstrates that Indonesia's negative publication system no longer satisfies the normative demands of a modern constitutional state. A system that continuously exposes land certificates to ex post annulment fails to meet the constitutional promise of fair legal certainty under Article 28D(1) of the 1945 Constitution.[103] Legal certainty, in contemporary constitutional theory, is not merely the availability of procedures to correct error, but the assurance that state-issued legal titles can be relied upon as final and authoritative. Where legality remains permanently conditional, the state implicitly transfers the risk of administrative failure to citizens, undermining both trust in public authority and the rule of law itself. From this perspective, the persistence of a negative publication system represents not a neutral policy choice, but a structural constitutional deficit.[104]

From a philosophical standpoint, the justification for reconstructing land registration cannot be grounded solely in efficiency or administrative convenience. Gustav Radbruch's value triad justice, legal certainty, and expediency requires that legal certainty be elevated to a position of priority when law has reached a minimum threshold of substantive justice.[105] In land administration, where certificates are issued after complex verification processes by state authorities, the absence of finality transforms legal certainty into a hollow promise. When citizens who act in good faith remain perpetually vulnerable to dispossession, the legal system violates what Radbruch termed the "inner morality of law." Consequently, a shift toward a positive publication system, where registered rights acquire conclusive legal force, is philosophically justified as a corrective to systemic injustice produced by excessive legal indeterminacy.[106]

In a comparative legal perspective, jurisdictions that have adopted positive publication systems, most notably the Torrens system, demonstrate that finality of title is a cornerstone of legal certainty in property law. Under such systems, the register is conclusive, and the state assumes responsibility for errors through mechanisms such as state liability and assurance funds.[107] Comparative studies show that this model enhances transactional security, reduces litigation, and strengthens public confidence in land administration. Importantly, these systems do not deny the possibility of error; rather, they reallocate risk from individual right holders to the state, consistent with the principle that the authority which certifies rights must also bear responsibility for its mistakes.[108] This comparative experience provides strong empirical and

[102] John Braithwaite, "Rules and Principles: A Theory of Legal Certainty," *Australian Journal of Legal Philosophy* 27 (2002): 47–82, https://classic.austlii.edu.au/au/journals/AUJlLegPhil/2002/2.pdf.
[103] Paul K. Gellert and Andiko Andiko, "The Quest for Legal Certainty and the Reorganization of Power: Struggles over Forest Law, Permits, and Rights in Indonesia," *The Journal of Asian Studies* 74, no. 3 (2015): 639–666, https://doi.org/10.1017/S0021911815000613.
[104] Edwin Buitelaar and Niels Sorel, "Between the Rule of Law and the Quest for Control: Legal Certainty in the Dutch Planning System," *Land Use Policy* 27, no. 3 (2010): 983–89, https://doi.org/10.1016/j.landusepol.2010.01.002.
[105] Gustav Radbruch, "Five Minutes of Legal Philosophy (1945)," *Oxford Journal of Legal Studies* 26, no. 1 (2006): 13–15.
[106] Hans Kelsen, "What Is the Pure Theory of Law?," in *Law and Morality* (Routledge, 2017), 101–8.
[107] Brendan Edgeworth, "Recent Developments in the Torrens System in Australia," in *Land Registration and Title Security in the Digital Age*, 2020, 74–89, https://doi.org/10.4324/9780367218171.
[108] Michael Stephen Mulliss, "A Review of the Application of Adverse Possession within the Torrens System of Land Regulation in Australia," 2009, https://sear.unisq.edu.au/8400/.

normative support for reconstructing Indonesia's land registration regime along positive publication lines.[109]

Such reconstruction also finds firm grounding in Article 33(3) of the 1945 Constitution, which mandates that land and natural resources be controlled by the state and utilized for the greatest welfare of the people. State control cannot be reduced to regulatory authority alone; it entails a constitutional duty of care to ensure that land administration produces equitable and predictable outcomes.[110] A land registration system that systematically generates disputes and insecurity contradicts the social-welfare orientation of Article 33(3). By contrast, a positive publication system aligns state control with social justice by guaranteeing that landholders, particularly smallholders and vulnerable groups, are not exposed to perpetual legal uncertainty caused by administrative shortcomings.[111]

From the perspective of Pancasila legal philosophy, the reconstruction of land registration must be understood as part of a broader ethical commitment to social justice and human dignity.[112] Pancasila rejects both rigid legal positivism and unfettered discretion; it requires law to function as a moral institution that harmonizes certainty with justice.[113] A positive publication system better reflects this ethos by ensuring that legal certainty is not illusory but real, lived, and socially meaningful. In this sense, final and reliable land titles are not merely technical instruments, but manifestations of the state's moral responsibility to protect citizens' livelihoods, security, and social standing.[114]

In conclusion, the reconstruction of Indonesia's land registration system toward a positive publication model is not merely an administrative reform but a constitutional and philosophical imperative. It responds directly to systemic failures revealed by judicial practice, aligns land administration with modern theories of legal certainty, and embodies the Pancasila commitment to social justice. Only through such reconstruction can land registration function as a true instrument of the rule of law, providing final certainty, effective protection of rights, and durable public trust in state institutions.[115]

4. Conclusion

This study concludes that the persistence of the negative publication system in Indonesian land registration constitutes a structural source of legal uncertainty rooted in historical, philosophical, and constitutional dimensions. The system is not merely an administrative choice but a continuation of the colonial cadastral logic that treated registration as declaratory rather than constitutive, thereby failing to guarantee definitive land rights. This historical legacy remains embedded in the contemporary framework, where registration records claim without conferring final legal force, institutionalizing contestability as a permanent systemic feature. A fundamental normative contradiction emerges from the analysis of Article 19 of the Basic Agrarian Law

[109] Hernando de Soto, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* (New York: Basic Books, 2013).

[110] Jimly Asshiddiqie, *The Constitutional Law of Indonesia: A Comprehensive Overview* (Sweet & Maxwell Asia, 2009).

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(UUPA). Although land registration is constitutionally mandated to ensure legal certainty, the negative publication system structurally undermines this objective by allowing land certificates to remain perpetually vulnerable to *ex post* judicial annulment. As administrative decisions (*beschikkingen*), certificates possess formal validity but lack material finality, reducing legal certainty to conditional legality. Consequently, persistent land disputes originate not only from administrative deficiencies but from an inherent incompatibility between constitutional objectives and regulatory design.

The limited positive elements introduced within the current framework such as Article 32(2) of Government Regulation No. 24 of 1997, the principle of openness, and the doctrine of *rechtverwerking,* function only as conditional correctives rather than systemic solutions. Their application depends on cumulative requirements and inconsistent judicial interpretation, preventing the realization of true legal finality. As a result, these mechanisms merely soften the consequences of the negative system while leaving its structural weaknesses unresolved. From a constitutional and philosophical standpoint, the negative publication system fails to satisfy the substantive requirements of Article 28D(1) and Article 33(3) of the 1945 Constitution when interpreted through modern legal certainty theory and the Pancasila principle of social justice. Legal certainty requires reliability, predictability, and finality, while social justice demands land governance that protects citizens, particularly vulnerable groups, from systemic insecurity. A system that normalizes the permanent contestability of land rights undermines both principles, transforming legal certainty into a formal promise and social justice into an abstract aspiration.

Accordingly, this study affirms that reconstructing Indonesia's land registration system toward a positive publication model is a constitutional and philosophical necessity rather than a mere policy preference. A system based on conclusive registration, state liability for administrative errors, and institutional assurance mechanisms would restore alignment between land administration and the rule of law, strengthen legal certainty, and enhance public trust. Such reconstruction reflects the normative foundation of the Pancasila *Rechtsstaat*, in which law integrates certainty, justice, and social welfare. The principal contribution of this research lies in its integrative constitutional philosophical critique linking colonial genealogy, judicial practice, and constitutional norms to justify a transition toward a positive publication system. The persistence of the negative publication system represents institutionalized legal uncertainty incompatible with Indonesia's constitutional commitments. Therefore, the transition toward a positive publication system should be understood as a normative correction that completes the unfinished decolonization of Indonesian land law and reaffirms the state's role as a genuine guarantor of land rights within a modern constitutional order.

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