

IMPLEMENTATION OF LAND REGISTRATION IN PROVIDING LEGAL CERTAINTY OVER LAND RIGHTS IN JAYAPURA CITY

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Abstract

This study aims to find out how the implementation of land registration in providing legal certainty of land rights in Jayapura City and understand what factors hinder the system of implementing land registration to obtain legal certainty of land rights in Jayapura City. This research was conducted in Jayapura City as the capital of Papua Province. The city of Jayapura is seen as a service city and still has land issues, namely regarding the sale and purchase of land. The results of the study show that the implementation of land registration in order to provide legal certainty of land rights in Jayapura City is carried out in two ways, namely sporadic, that is, individual registration is carried out. Meanwhile, the factors that led to the implementation of land registration in Jayapura City not complying with regulations were: a) collection of juridical data and physical data; b) incomplete facilities and infrastructure; c) low integrity of the apparatus, and d) low awareness of the community itself. To understand how the implementation of land registration in providing legal certainty of land rights in Jayapura City requires legal counseling that is directly delivered by extension agents to the public, either through printed media (such as banners, brochures, leaflets).

Keywords: Land Registration, Legal Certainty, Land Rights

INTRODUCTION

For the Papuan Indigenous People, especially the Jayapura City indigenous people, there is no life on this earth if there is no land. Soil is the source of all life on this earth. That is the philosophy of land for the indigenous people of Jayapura City and in general for Papuans. So that what is above and below the land as forms of natural resources, the indigenous people of Jayapura City actually view the land as a whole of these natural resources. The land becomes one unit with what is above and within it. Ownership of land in the indigenous people of Jayapura City is communal ownership based on clan, marga. For generations, land for Papuans is a source of life and identity for Papuans, so they are not familiar with buying and selling land.

Thus, any land sale and purchase agreement in the area must be preceded by a letter of customary release as part of the customary law's recognition of the rights to the land. The understanding of land in general for the people of Papua is a source of hope and assurance of life that is certain if managed wisely which is a manifestation of the Almighty whose existence cannot be replaced by values or material forms. Land is also a symbol of the existence or presence of the Papuan people and their culture.

Control over and regulation as well as implementation of the use of land by the State is directed towards its utilization by maintaining the Right to Ulayat Land, People's Land and social functions to realize social justice for all Indonesian people. This is further emphasized in Article 6 of the Basic Agrarian Law No. 5 of 1960 which reads: "All land rights have a social function". Control over customary land rights, including in Jayapura City, should refer to the Basic Agrarian Law Number 5 of 1960 and other implementing regulations.

The basic agrarian law (UUPA) which is the source of national land law. So far, the development of land law has experienced many criticisms and challenges. Various implementing regulations for the UUPA have not materialized, while new things that have been anticipated emerge and require a solution to be found. To answer this challenge is not a simple task. Every land right has a social function so that every person, legal entity or agency that has a relationship with the land is obliged to use the land by maintaining the land, increasing its fertility, preventing damage so that it is more efficient and effective and beneficial for the welfare of society.

One of the principles of the National Agrarian Law is that all land rights have a social function. This means that every person, legal entity or agency that has a legal relationship with the land is obliged to use the land by preserving the land, increasing its fertility and preventing damage so that it is more efficient and successful. useful and beneficial for the welfare of society. In addition to this, it is not justifiable that land will be used solely for personal gain, especially if it causes harm to the community.¹

The development of national land law, particularly in the formation of laws and regulations, requires an approach that reflects a pro-active mindset based on a critical and objective attitude.² In facing this challenge, there are at least two kinds of reactions that often arise. Namely, a reaction based on a legislative approach, which with its conservative attitude finds it difficult to accept new developments and tends to reject them on the grounds that they cannot be appointed explicitly in a law. On the other hand, other reactions based on a functional approach tend to be accommodative to new developments in terms of their benefits, and if necessary, propose to amend the law.

Both of these reactions seem to pay less attention to the concepts or principles behind every rule contained in laws and regulations and tend to be more pragmatic, namely quickly rejecting or accepting new developments, and only then thinking about the consequences.

Article 4 of the BAL, which basically regulates the definition of land rights, which only covers the surface of the land, can be applied to the granting of rights underground and in airspace. The reason is that up to now what has been regulated is the institution of land rights covering the surface of the earth with the space below and above it where necessary. Outside this stratum, the consistency of the concept of the right to control for the state, both underground and in the air, is the state's right.

One of the issues that need attention is the Land Deed Making Official according to Government Regulation number 24 of 1997, that land registration and arrangement of land rights for the community.³ If this is not handled, it will disrupt the course of development, considering that the existing land supply is increasingly limited while the need for land for development is increasing.

¹ Rusmadi Murad, *Settlement of Legal Problems over Land*, Bandung: Alumni, 1991, p. 112

² Mukmin Zakie, *State Authority in Land Acquisition for Public Interests in Indonesia and Malaysia*, Yogyakarta: Buku Litera, 2013, page 4.

³ Aan Efendi and Freddy Poernomo, *Administrative Law*, Jakarta: Sinar Graphic, 2017, p. 20

RESEARCH METHODS

This study uses normative juridical legal research methods. This applies a statutory approach as well as an approach taken by taking direct data in the field related to land registration. Retrieval of data from documents related to the problem under study, namely among others from books, laws and regulations, research reports, results of seminars and papers as well as PPAT in Jayapura City which has permanent legal force (*inkracht van gewijsde*) which relating to land registration.⁴The data obtained in the study were analyzed descriptively. Qualitative analysis is intended to describe law enforcement on land registration, factors that hinder and or support law enforcement on land registration and the efforts made by PPAT.

RESULTS AND DISCUSSION

Implementation of Land Registration to provide Legal Certainty in Jayapura City

Implementation of systematic land registration can be carried out as a routine activity of the Land Office or as an annual activity of a project/program. The implementation of systematic land registration, apart from being aimed at providing guarantees and legal protection for land owners, also aims to quickly achieve a "complete village/kelurahan" both in the mapping of land parcels and in the bookkeeping of land rights. The land registration data will then be used for land information services for the community. The achievement of the goal of "complete village/kelurahan" will soon be realized if the implementation of systematic land registration is concentrated in one location, carried out simultaneously and simultaneously in a relatively short period of time (maximum 2 fiscal years).

With the above considerations, the executor of systematic land registration must be an ad hoc executor or in the form of an Adjudication Committee assisted by an Adjudication Team that is given the same authority as that of the Head of the Land Office. And to focus more on achieving its targets, the Adjudication Committee is supported by a management unit at the land office level, in other words the Land Office Management Support Unit (MSUKp). Meanwhile, for the implementation of systematic land registration on a national scale, the existence of the Adjudication Committee will be assisted by the Management Support Unit at Kanwil (MSUK) and Management Support Unit at the Center (MSUP), each of which has functions, duties and authorities according to their scope. Besides that, for the successful implementation of systematic land registration and for realizing the achievement of the target of "complete village/kelurahan", good planning, periodic monitoring and effective supervision are required. Therefore, the implementation of systematic land registration must be carried out according to standard standards, starting from the planning, implementation, monitoring and supervision stages.

The main points of systematic land registration activities are also determined to make it easier to understand the process flow that must be followed at each stage of the process.⁵And by outlining the work capacity of executors at each stage of the activity will facilitate the planning of the use of executors, budgeting for systematic land registration fees, scheduling work completion times as well as evaluating the executor's performance. Systematic land registration can be funded by the Central Government budget (APBN, PHLN), Regional Government (APBD) or can also be funded by the community itself. While the supporting facilities for systematic land registration follow the minimum standard of completeness (quantity) that must be provided so that the adjudication committee/team can carry out their duties properly.

1. Preparation of Systematic Land Registration

a. Planning and Location Determination.

- 1) The Head of the Land Office proposes a location for systematic land registration to the Head of the BPN Regional Office no later than September, based on the work plan of the Land Office with priority on village/kelurahan areas or equivalent, which meet the criteria.
- 2) The location unit for systematic land registration is the entire area of a village/kelurahan or its equivalent or part of the territory of a village/kelurahan which is the remnant of the previous systematic land registration activities.
- 3) The Head of the Regional Office submits the recapitulation of the Land Office's proposals to the Head of the National Land Agency cq Deputy for Land Information for further processing, no later than the beginning of October each year.
- 4) The proposed location for systematic land registration will be evaluated for its feasibility by the Deputy Director of UB Land Information, Project Director. It is the locations for systematic

⁴ Soerjono Soekanto, *Introduction to Legal Research*, Jakarta: UI Press, 2012, page 42.

⁵ Istijab, *Settlement of Land Disputes After the Basic Agrarian Law*, *Widya Yuridika* 1, no. 1 (2018): 11–23.

registration that meet the requirements that will be forwarded with their proposals and to be assigned the Head of the National Land Agency.

- 5) The Head of the National Land Agency determines the location of systematic land registration in a Decree issued in November and is effective from the inauguration and oath of the adjudication committee/team before the Head of the Land Office.
 - 6) In villages/kelurahans that have been designated as locations for systematic land registration, sporadic first land registration activities are no longer permitted. This is done to achieve the target of "complete village/kelurahan", so that not a single piece of land is not recorded and mapped by the Adjudication Committee/Team.
 - 7) Designation of a village/kelurahan as a location for systematic land registration is only permitted for a maximum of 2 (two) consecutive years, if it is organized by a government project, except for systematic land registration by self-help communities. The timeframe is set with the intention of achieving a complete village acceleration program. Nevertheless, the Land Office needs to plan a program to accelerate self-help systematic land registration by aiming at "complete villages/kelurahans" in the not too distant future.
- b. Planning of Executing Personnel
- 1) The Head of the Land Office proposes candidates for the Adjudication Committee and Team who meet the requirements to the Head of the BPN Regional Office no later than September, based on qualifications.
 - 2) The Head of the BPN Regional Office examines the eligibility of the candidates for the Adjudication Committee and Team. then, the Head of the BPN Regional Office submits back the proposed Adjudication Committee Candidates who have met the requirements to the Head of BPN together with the proposed location for systematic land registration by October at the latest.
 - 3) The Head of BPN establishes an Adjudication Committee in a Decree of the Head of BPN. The Decision Letter for the Appointment of the Adjudication Committee was issued in November and takes effect after the inauguration and appointment of the oath by the Head of the Land Office.
 - 4) The Head of the BPN Regional Office determines the Adjudication Team based on the Decree of the Head of the Regional Office after the issuance of the Decree of the Head of BPN regarding the Adjudication Committee as referred to in point 3 above. The Decree on Appointment of the Adjudication Team was issued in December.
- 2. Determination of Systematic Land Registration Implementing Support Personnel**
- a. Prospective Project Leaders/Project Section and Project Treasurer Candidates are proposed by the head of the work unit/project person in charge. Appointment of Pro/Pimbapro and Treasurer based on Decree.
 - b. The Head of the Land Office proposes MSUKp Implementing Candidates and the Extension Team (CRS) to the Head of the BPN Regional Office in September.
 - c. The Head of the BPN Regional Office appointed the MSUK, MSUKp and Extension Team (CRS) Implementing Staff based on a decree in December.

3. Preparation and Work Plan

The Adjudication Committee assisted by the Adjudication Team is required to carry out work preparations by making, preparing, or providing the following:

- a. Organizational Structure Chart of the Adjudication Committee and Team.
- b. Description of the duties of each member of the Committee and the Adjudication Team.
- c. Schedule work plan / time schedule.
- d. Adjudication Data Processing Schedule (trial date, number and date of announcement, number and date of minutes, date of committee decision, number and date of measurement letter, date of bookkeeping, field identification number, right number, blank serial number, and so on).
- e. Work progress report board.
- f. Copy of Registration Map.
- g. List of inventory items of the Adjudication Team.
- h. List of attendance for members of the Committee and the Adjudication Team.
- i. Control book for incoming mail.
- j. Control book for outgoing mail.
- k. Archive Binder for incoming mail.
- l. Archive Binder for outgoing mail.
- m. Guest Book.
- n. Diary of each member of the Adjudication Team.

o. Counseling materials

1) Appointment of the Adjudication Committee and Team

The Adjudication Committee and the Task Force are required to take an oath or make a promise before the Head of the local Land Office in accordance with the applicable laws and regulations. The Adjudication Committee which has been appointed based on the Decree of the Head of the National Land Agency and the Adjudication Team which has been stipulated by the Decree of the Provincial BPN Kakanwil, must be appointed by the Head of the local Land Office in January of the current project year, each consisting of 1 (one) Chairman, 1 (one) Deputy Chairperson for Technical Affairs, 1 (one) Deputy Chairperson for Juridical Affairs, 1 (one) or several Village/Lurah Heads and Village/Kelurahan Pamong Villages, Several Juridical Task Force members, Administrative Task Force members, and Measurement Task Force .

2) Mobilization

The Adjudication Team on duty at the systematic land registration location is equipped with a Field Office, work equipment and equipment for the adjudication team as described in Part VI Supporting Facilities. Equipment and supplies for the Adjudication Team must have been mobilized (prepared) to the Field Office/base camp before the Committee and the Adjudication Team carry out their activities in January. This mobilization activity is carried out by the Supporting Management Unit (MSUK/MSUKp/management managing the project). Mobilization of the Committee and the Adjudication Team to the location of the systematic land registration should begin the day after the inauguration and oath-taking, this is done considering that members of the Committee and the Adjudication Team can immediately carry out outreach activities together with the Extension Team (CRS) in their working area.

3) Counseling

In accordance with the provisions of laws and regulations regarding land registration, especially for the implementation of systematic land registration, it is obligatory to carry out counseling activities at adjudication locations for all participating communities in the systematic land registration program.

Counseling aims to inform landowners or their proxies or other interested parties that in the Village/Kelurahan a systematic land registration will be held, by explaining the objectives and benefits of registering the land parcels, the conditions for land registration, the rights and obligations of participants/applicants for land registration systematic, systematic land registration procedures, and statutory provisions related to land registration.

The main objective of these extension activities should be to create community participation, increase the enthusiasm and concern of landowners to participate as participants/applicants for systematic land registration, and create transparency in the systematic land registration process.

Factors That Obstacle the System for Implementing Land Registration to Obtain Legal Certainty over Land Rights in Jayapura City.

In this study, it can be said that objects or parcels of land that are registered through the direct conversion process are land originating from customary land (Indonesian-owned land) that has proof of ownership or rights, such as cinak, petitir, petuk D original, all this right was issued before 1960 or before the promulgation of the BAL. In addition, the ownership history of land plot objects can be traced from generation to generation, both inheritance and transfer of rights.

The land registration mechanism is in the direct conversion process, namely the owner or applicant submits an application to the Land Agency Office by completing the base of rights, proof of payment of Land and Building Tax (PBB), Resident Identity Card (KTP) and other certificates according to the requirements which has been set. The applicant must fill out the application form provided at the Land Office.

The requirements that must be met by the applicant have opened up opportunities for crimes to occur, including forgery of letters or the use of fake letters. In Article 263 of the Criminal Code (KUHP) it is stated "anyone who makes a fake letter or falsifies a letter that can give rise to a right, agreement or debt relief, or which is intended as evidence of something with the intention to use or order another person use said letter as if the contents were true or not forged, shall be punished if said use could cause harm, due to forgery of letter, with a maximum imprisonment of six years".

Furthermore, in jurisprudence it is even more concrete, including the Hoge Raad Decision dated June 15, 1931 stating that a piece of writing was made falsely, if it creates the wrong impression as if it

came from someone who signed it, that is, if it is signed with a name composed by someone who does not exist.⁶

Then, based on the data obtained from the Head of the Land Measurement and Registration Section of the Jayapura City Land Office, it was stated that one of the factors that encourages someone to manipulate data on land parcels registered by the applicant is the increasing land value, thus encouraging the applicant to commit bad faith in obtaining profits. from the plot of land.

The location and status of the land is also sometimes different from the sporadic statement of physical ownership that is known by the kelurahan or village head. This error can occur based on the results of research in the three sub-districts/villages in the research area, because the village or kelurahan office does not have accurate administration in the land sector for land parcels within their territory. For example, a detailed land parcel includes an area and the owner of the land parcel should be registered at the Kelurahan Office. This data is very important, because apart from being related to tax collection, it is also related to the owner or party controlling the land. However, based on the data obtained, it shows that sometimes the kelurahan provides a statement regarding the statement of (sporadic) physical control of more than one person on a plot of land or vice versa. Data on the list of land parcels formerly owned by Indonesia and state land in their territories are unclear and there tends to be discrepancies between the parcel or kahir numbers and the land parcels in question.

This is due to the unavailability of land parcel maps within the kelurahan/village area. This fact is also reflected in the data obtained through interviews with the Abepura District staff, Ronald, that the detailed letter was not placed on the map, because the map did not exist. So, the occupation of the land parcels is only based on recognition and ownership. Data on the list of land parcels formerly owned by Indonesia and state land in their territories are unclear and there tends to be discrepancies between the parcel or kahir numbers and the land parcels in question. This is due to the unavailability of land parcel maps within the kelurahan/village area.

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The involvement of the applicant and the kelurahan/village in terms of the root cause of the emergence of crime is the incorrect acknowledgment of the applicant as the owner of the land being applied for and administrative disorder regarding the location and boundaries of land ownership in their area. Apart from that, a detailed letter which is used as a basis for rights is also a means or tool as a forerunner to the birth of crimes in the land sector.

Furthermore, deed of sale and purchase, inheritance and grants is also one of the means of birth of crimes in the field of land. Based on data obtained from the police, it shows that the District as the Official for Making Land Deeds for land originating from uncertified detail status, is very dependent on the statement of the owner as the seller or the one who transferred the land. The seller's statement in reality is not necessarily the same as the physical data. Therefore, land that is used as an object of sale and purchase is sometimes certified in the name of another person. In this case, it also shows that the administration of land parcels in their area is inaccurate.

So, based on the above data, various forms and types of crimes can be found, including forgery of letters, fraud, embezzlement, and collusion. Thus, the causative factors that led to the implementation of land registration in Jayapura City not in accordance with presidential regulation number 65 of 2006 were crimes in the land sector where the land registration mechanism always had problems, because this was caused by facilities and infrastructure such as maps that were not complete, low integrity for

⁶ Prasetyo Aryo Dewandaru, Nanik Tri Hastuti, Fifiani Wisnaeni, Settlement of Land Disputes Against Double Certificates at the National Land Agency, Notary 13, no. 1 (2020): 154–169.

⁷ Interview on 13 August 2022

sub-district officials, sub-district officials/PPAT Camat, tax officials and the community members themselves. Then specifically for PPAT sub-district heads who have less ability regarding the transfer of rights.

CONCLUSION

Based on the results of the research that has been done, it can be concluded that the implementation of land registration in order to provide legal certainty of land rights in Jayapura City is carried out in two ways, namely sporadic, namely individual registration, second, systematic land registration, namely registration of land rights carried out individually or in groups, and land registration through land registration executors. according to legal mechanisms. The factors that led to the implementation of land registration in Jayapura City not according to regulations were: a) collection of juridical data and physical data; b) incomplete facilities and infrastructure; c) low integrity of the apparatus, and d) low awareness of the community itself.

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