

## THE CONCEPT OF LAND REGISTRATION SYSTEM IN INDONESIA IN REALIZING LEGAL CERTAINATION

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Received 16 July 2020 • Revised 22 Aug 2020 • Accepted 2 Okt 2020

### Abstract

The land registration system used in Indonesia is a negative publication system with a positive tendency. In a negative registration system (negative system) with a positive tendency, the government does not guarantee legal certainty for the holder of valid evidence (certificate). The government is also not responsible for the data and information contained in land title certificates. Data and information are considered correct as long as no other party sues. This condition causes various problems, such as the emergence of conflicts and land disputes between various parties in several regions in Indonesia. This study is normative with secondary data as a data source. Data is examined by means of document studies. Data is analyzed qualitatively. The results of the analysis are presented descriptively. The research results stated the concept of land registration system in Indonesia in an effort to realize legal certainty is to land that has been certified for more than 5 years and no one has sued, so the land must be immediately positively positive. This means that there are no more lawsuits that can be filed by other people. Therefore, it is proper for the government to immediately implement the mandate of Article 32 paragraph (2) PP No. 24 of 1997 as an effort to provide legal certainty for land owners. This needs to be done so that the state truly guarantees legal certainty and legal protection as well as an orderly land administration for both certificate holders and third parties who obtain land rights in good faith.

**Keywords:** *Land Registration System, Legal Certainty, Registration System*

### INTRODUCTION

Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that the land, water and natural resources contained therein are controlled by the State and used for the greatest welfare of the people. Based on this, as long as the people are united as the Indonesian nation still exists and as long as the earth, water and space still exist, under any circumstances there is no power that will be able to break or cancel the relationship in question.<sup>1</sup>

In connection with this, the Government of Indonesia on September 24, 1960 enacted and began to enforce Law Number 5 of 1960 concerning Basic Agrarian Principles, better known as the Basic Agrarian Law (UUPA). With the birth of this UUPA, a uniformity (uniformity) was achieved regarding land law, so that there were no more land rights according to Western law in addition to land rights according to customary law.<sup>2</sup>

The main objectives of the UUPA are:

1. Laying the foundations for the formulation of national agrarian law, as a tool to bring prosperity, happiness and justice to the State and the people in order to achieve a just and prosperous society;
2. Laying the foundations for unity and simplicity in the land law;

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<sup>1</sup> Ali Achmad Chomzah, *Hukum Agraria (Pertanahan di Indonesia)*, Jakarta: Prestasi Pustaka Publisher, 2003, p. 49.

<sup>2</sup> C.S.T. Kansil, *Modul Hukum Perdata*, Jakarta: PT Pradnya Paramita, 1995, p. 178.

3. Laying the basis for providing legal certainty regarding land rights for the people as a whole.<sup>3</sup>

The object of land rights is land. This means that what the rights holder deserves is the land. The number of agrarian conflicts that have occurred has shown that Indonesia's land administration needs improvement in order to provide legal certainty of land rights. One of the root causes of agrarian conflict is the land registration system used in Indonesia in the form of a negative publication system with a positive tendency.

In a negative registration system (negative system) with a positive tendency, the government does not guarantee legal certainty for the holder of valid evidence (certificate). The government is also not responsible for the data and information contained in land title certificates. Data and information are considered true as long as there is no other party to challenge them. This condition causes various problems, such as the emergence of conflicts and land disputes between various parties in several regions in Indonesia.

The land registration system adopted by Indonesia is contained in several laws and regulations related to land registration, such as the Supreme Court Decree No 495 / Sip / 1975; Government Regulation No. 24/1997 on Land Registration and Law No. 5/1960 on Basic Agrarian Regulations (UUPA). The existence of legal uncertainty over ownership of land rights certainly results in losses, both the government through BPN and the community who are threatened with ownership of their land rights. Based on the above background, the problem in this research is how the concept of the land registration system in Indonesia in an effort to realize legal certainty?

## METHODS

This research is basically a normative juridical research, because the target of this research is law or normative principles in the form of legal principles and legal systems. Normative research in this research is research that describes or describes in detail, systematically, thoroughly and deeply about the rationale for the concept of land registration systems in Indonesia in an effort to achieve legal certainty.

This research is descriptive in nature because it describes the applicable laws and regulations and is associated with legal theories in their implementation practice relating to the problems to be investigated. The data obtained will be analyzed using qualitative analysis.

## RESEARCH RESULT AND DISCUSSION

### The Concept of a Land Registration System in Indonesia in an Effort to Achieve Legal Certainty

In positive law in Indonesia, it is clearly stated that a certificate is strong evidence. Strong in this case means that as long as there is no other means of evidence that proves its truth, then the information contained in the certificate must be considered true without the need for additional. However, in practice it is not uncommon to find overlapping certificates, in the sense that the land object is one but there are 2 (two) certificates, with the existence of two different certificates on the same plot of land, of course it can affect the strength of the certificate as evidence, although the main function of the certificate is as evidence, but a certificate is not the only evidence of land rights, because it may still be proven by other evidence, such as witnesses, sale and purchase certificates, decree granting rights. However, the existence of another certificate on a plot of land has resulted in 2 (two) certificates, so that the status of the certificates becomes weak, so that the overlapping case of certificates cannot provide full legal protection to the owner and holder of land rights.

If the issuance of this certificate is carried out through correct procedures and procedures, then the position of the certificate of land title can provide legal protection for the owner and holder of land rights and become strong evidence, both regarding the types of rights, subjects and land, as regulated by Government Regulation No. 24 of 1997 and Law Number 5 of 1960 concerning Basic Agrarian Regulations.

The existence of overlapping certificates in one plot of land certainly has legal consequences, namely:

#### 1. There is Legal Uncertainty in the Legislation

One of the objectives of land registration as stipulated in Article 3 of Government Regulation No. 24 of 1997 is to provide legal certainty and protection to rights holders of a land parcel, apartment unit and other registered rights so that they can easily prove themselves as holders of the rights concerned.<sup>4</sup>

<sup>3</sup> Urip Santoso, *Pendaftaran dan Peralihan Hak Atas Tanah*, Jakarta: Prenada Media, 2014, p. 1-2.

<sup>4</sup> Herman Hermit, *Cara Memperoleh Sertipikat Tanah*, Bandung: Maju Mundur, 2009, p. 31.

To provide legal certainty and legal protection, the right holder in question is given a certificate of land rights.

In Article 19 paragraph (2) letter c of the UUPA it is stated that the end of the land registration activity carried out by the Government is the issuance of a certificate of proof of rights, which acts as a strong means of proof. The UUPA does not mention the name of the certificate of land title that is registered.<sup>5</sup> Only in Article 13 paragraph (3) Government Regulation no. 10 of 1961 states that a certificate of proof of land rights that is registered is called a certificate, namely a copy of the land book and a measuring letter after stitching it together with a cover paper whose form is determined by the Minister of Agrarian Affairs.

When there is an overlap of certificates in a certain plot of land, it will certainly cause legal uncertainty over the ownership status of the land right, which automatically causes legal uncertainty over the laws and regulations that govern it, such as UUPA and PP. 24 of 1997. This is as stated by Satjipto Rahardjo who stated that legal certainty does not lie in the certainty of laws. However, legal certainty occurs when people comply with applicable laws and regulations.<sup>6</sup>

It is necessary to understand that speaking of legal certainty must also speak of justice. Why is that? Legal certainty is not justice so justice is not legal certainty. However, legal certainty must accommodate justice. Because justice can be realized, one of them is through legal certainty.

## 2. The emergence of a dispute for the parties

In the absence of legal certainty in the UUPA and PP. 24 of 1997, there will be legal consequences for the parties, namely legal disputes between land owners claiming the disputed land which may result in a lawsuit to the court with different claims which according to the author will be very detrimental to both parties, because it will result in losses from in terms of time, energy, thoughts, and also in terms of matter.

This is due to problems or conflicts related to individual or private legal relationships, often when the matter is brought to court, it will always take a long time and the costs are very expensive and the results cannot be expected or confirmed by either party. Disputing has brought strong evidence.<sup>7</sup> In fact, later on, if the matter has been decided by a court judge and the decision has permanent or definite force, the decision may not be implemented immediately considering that there is a possibility for reconsideration and resistance from the party executed.<sup>8</sup>

Not only that, for the parties to a dispute or a case when their case is brought to court, both parties will always be faced with a "win" or "lose" issue, which means that the two parties will always be mutually hostile. In fact, it often happens that land disputes negatively impact family or business relationships.

## 3. Negative Legal Implications

This implication comes from people who can no longer trust the statutory provisions in the land sector. The author is of the opinion that the loss of legal certainty is not due to laws and regulations, but due to inaccuracy and carelessness of Land Office officials in processing the issuance of land title certificates.

The officers and officials of the Land Office are careless as a result of the implementation of the land registration system adopted in the provisions of Government Regulation Number 24 of 1997, namely that the land registration system is carried out with a negative system with a positive tendency. This system basically does not provide legal certainty, let alone legal protection for both certificate holders and third parties who obtain land rights.

The land registration system in Indonesia according to Government Regulation No. 24/1997 uses a negative publicized land registration system with a positive tendency. The point of the negative publication system with a positive tendency is that this land registration system uses a system of registration of rights (Torrens / registration of titles system), but the publication system has not been able to be pure positive.

This is because the physical data and juridical data in the land certificate are not certain to be correct, even though they must be accepted by the Court as correct data as long as there is no evidence

<sup>5</sup> Article 19 paragraph (2) letter c of Law No. 5 of 1960 concerning Basic Agrarian Principles.

<sup>6</sup> Satjipto Rahardjo, *Biarkan Hukum Mengalir*, Jakarta: Kompas, 2007, p. 79.

<sup>7</sup> Rachmadi Usman, *Pilihan Penyelesaian Sengketa di Luar Pengadilan*, Bandung: Citra Aditya Bakti, 2013, p. 15.

<sup>8</sup> M. Yahya Harahap, *Beberapa Tinjauan Mengenai Sistem Peradilan dan Penyelesaian Sengketa*, Bandung: Citra Aditya Bakti, 1997, p. 225-226.

to prove otherwise. In addition, if a party experiences loss of land rights due to the illegal transfer of land rights by another party or an error in the registration, the government does not provide compensation for compensation.

In order to overcome the weakness of the publication system in the land registration system, so far Indonesia has used a *rechtsverwerking* agency. The use of *rechtsverwerking* institutions is caused by Indonesian land law that still uses the basis of customary law and does not recognize other institutions, such as *acquisitive* verification or *adverse possession*. In customary law, if someone leaves their land unworked for a period of time, then the land is worked on by another person who obtained rights to the land in good faith, then the original owner of the land will lose his land rights (LoGA).

Based on this, a land registration system concept in Indonesia is needed in an effort to achieve legal certainty. According to the author, the land registration system in Indonesia does not need changes. However, for land that has been certified for more than 5 years and no one is suing, then the land must be positivated immediately. This means that there are no more lawsuits that can be made by other people.

This needs to be done because so far the community can still file lawsuits against land that has been certified for more than 5 years, as long as the claimant owns and is able to provide evidence that he is the owner of the land he claims. Whereas based on the provisions in Article 32 paragraph (2) Government Regulation No. 24 of 1997 stipulates that:

“In the event that a land parcel has been issued a certificate legally in the name of the person or legal entity who acquired the land in good faith and actually controls it, then the other party who feels that he has rights to the land can no longer demand the exercise of that right if within 5 (five) years from the issuance of the certificate, there is no written objection to the certificate holder and the Head of the Land Office concerned or does not submit a lawsuit to the Court regarding control of the land or the issuance of the certificate.”

Based on these provisions, it is appropriate for the government to immediately implement the mandate of Article 32 paragraph (2) Government Regulation No. 24 of 1997 as an effort to provide legal certainty for land owners. This needs to be done so that the state truly guarantees legal certainty and legal protection as well as an orderly land administration for both certificate holders and third parties who obtain land rights in good faith.

## CONCLUSION

The concept of the land registration system in Indonesia in an effort to achieve legal certainty is that for land that has been certified for more than 5 years and no one is sued, then the land must be immediately positivated. This means that there are no more lawsuits that can be filed by other people. Therefore, it is appropriate for the government to immediately implement the mandate of Article 32 paragraph (2) Government Regulation No. 24 of 1997 as an effort to provide legal certainty for land owners. This needs to be done so that the state truly guarantees legal certainty and legal protection as well as an orderly land administration for both certificate holders and third parties who obtain land rights in good faith.

## REFERENCES

- Ali Achmad Chomzah, *Hukum Agraria (Pertanahan di Indonesia)*, Jakarta: Prestasi Pustaka Publisher, 2003.
- C.S.T. Kansil, *Modul Hukum Perdata*, Jakarta: PT Pradnya Paramita, 1995.
- Chamidah, Dina, Sonny Kristianto, Sunaryo, Otto Fajarianto, Andi Ahmad, Yuli Ani Setyo Dewi, Edi Sambodja, Diah Ambarumi Munawaroh, Nurlaeli Fitriah, and Prita Indriawati. 2019. “Feasibility of Based Augmented Reality Devices Discovery Learning on Students Learning Outcomes in Morphology of Wijaya Kusuma Flower (*Epiphyllum Anguliger*).” in *Journal of Physics: Conference Series*.
- Herman Hermit, *Cara Memperoleh Sertipikat Tanah*, Bandung: Maju Mundur, 2009.
- M. Yahya Harahap, *Beberapa Tinjauan Mengenai Sistem Peradilan dan Penyelesaian Sengketa*, Bandung: Citra Aditya Bakti, 1997.
- Rachmadi Usman, *Pilihan Penyelesaian Sengketa di Luar Pengadilan*, Bandung: Citra Aditya Bakti, 2013.
- Satjipto Rahardjo, *Biarkan Hukum Mengalir*, Jakarta: Kompas, 2007
- Soerjono Soekanto dan Sri Mamuji, *Penelitian Hukum Normatif-Suatu Tinjauan Singkat*, Jakarta: Rajawali Press, 2007.
- Urip Santoso, *Pendaftaran dan Peralihan Hak Atas Tanah*, Jakarta: Prenada Media, 2014.

Rostini, Deti, Dwi Seno Wijanarko, Otto Fajarianto, Elfrida Ratnawati, Mukarto Siswoyo, and Yhonanda Harsono. 2019. "Innovation Education Character Based on Management Learning at Junior High School." *International Journal of Recent Technology and Engineering*.

**Laws and Regulations:**

1945 Constitution of the Republic of Indonesia.

Law Number 5 of 1960 concerning Basic Agrarian Regulations.

Government Regulation No. 24 of 1997 on Land Registration.