



## The Rationality on Regulation of Village Government Function on First-Time Land Registration to Form the Land Ownership Certainty in Indonesia

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### **Abstract**

This article aims to find the rationality on the regulation of village government function on the first-time land registration. Negative publication system in Indonesia Agrarian law leads to the uncertainty of land ownership which results in conflicts. A strong optimization on the function of Village Government on land registration is necessary. This study employed a normative approach. Communal regime-based natural resources management becomes the basis of the rationality of Village Government' function strengthening on the land registration.

**Keywords:** Land Registration; Negative Publication System; Village Government; Land Ownership Certainty;

### **Introduction**

There is different orientation between the UUPA (Basic Agrarian law) and the PP (Government Regulation) no. 24 of 1997 on the land registration. On the one hand, publication system adopted by section 19 of UUPA leads to conflicts. On the other hand, principles of safety and positive system adhered by the PP no. 24 of 1994 are expected to form a law certainty. Negative system on land registration leads to the ownership uncertainty. It leads to disputes on the land registration in Indonesia.<sup>1</sup>

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<sup>1</sup> a) a phenomenon of dual certificate ownership occurs in Sukoharjo regency. This land dispute begins when there are two Right of Ownership Certificates no. 124, issued in 1973, Cemani village, Grogol district, Sukoharjo regency on behalf of Indra Sepoetra.TB. And there is HGB (Certificate of Right of Use of Structure) no. 8 that was issued in 1994, Cemani village, Grogol district, Sukoharjo regency on behalf of PT. Pondok Solo Permai as the result of swap with Cemani Village Government, the village treasury land parcel no. 141/Pt.95 A based on the statement letter of the Regent of Sukoharjo no. 143/1244/1992. The plaintiff is PT. Pondok Solo Permai and the defendant is Land Registry Office of Sukoharjo Regency. Even, this problem has got the State Administrative Court's decree by no. 24/G/TUN/2000/PTUN.Smg. (Jurnal Repertorium, ISSN: 2355-2646, Volume II No. 2 July-December 2015, ASPEK KEPASTIAN HUKUM DALAM PENERBITAN SERTIFIKAT HAK TANAH (Analisis Putusan Pengadilan Tata Usaha Negara Semarang Nomor Putusan PTUN Nomor 24/G/TUN/2000/PTUN.Smg) Yuyun Mintaraningrum Mahasiswa S2 Magister Kenotariatan Universitas Sebelas Maret Email: Yuyun\_mn@yahoo.co.id Purwono Sungkowo Raharjo Djoko Wahju Winarno Dosen Fakultas Hukum Universitas Sebelas Maret, hal 107).

Some problems on the land registration that leads to a conflict of course damage the rightful owner. This paper intends to strengthen the function of Village Government to overcome the weaknesses of negative publication system to give legal certainty of the land registration.

Based on the descriptions as mentioned earlier, the researchers intend to research “*The Rationality of the Regulation of the Function of the Village Government on the First-Time Land Registration to Form the Land Ownership Certainty in Indonesia.*”

## **Methodology**

This was anormative legal research. The nature of this legal research was perspective and applied. The approaches employed in the legal research is constitutional approach and conceptual approach. The data were collected through literature study and were deducted by using syllogism.

## **Discussion**

### ***Negative Publication System and Landownership Uncertainty in Indonesia***

The primary problem with the land registration is how it can warrant legal certainty for the holder of the right. The warranty of legal certainty on the landholder’ right depends on the system being used for the land registration.<sup>2</sup> The land registration system used by UUPA and PP no. 24 of 1997 is negative but positive-tended publication system. The system is not purely negative, and it contains consequences. The government as the organizer of the land registration shall be able to present the correct data in the land book and registration map as long as possible. However, the system is not the positive ones. In the

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b) The case of Double certificate ownership that involves Mr. H. Abdul Haris, Hj. Hasnah, Hj. Maemunah, and Hj. Hamdana with the head of the Land Registry Office of Makassar, on the 282 square meters (m<sup>2</sup>) land parcel located in Makassar. For that land parcel, two SHMs (right of ownership certificates) are issued. Certificate no. 1361 of 8 April 2002, survey document no. 0071 of 21 September 1998 on behalf of Hamna. Another one is certificate no. 1361 of 15 October 1998, Survey document no. 0071 of 21 September 1998 on behalf of the same name (Hamna), only with the different date and year of the issuance. The landowner never asks anyone or ask the Head of Land Registry Office of Makassar to issue a right of ownership certificate. In this case, the landowner feels being aggrieved for the issuance of the new certificate without her concerns. (Thesis, Sertipikat Ganda Tinjauan Yuridis Terhadap Putusan Mahkamah Agung Republik Indonesia Nomor 156/K/Tun/2005 Oleh Margaretha Dewi Kirana, S. H, page 6).

c) There is also another case of the double certificate on 2014 contained in the decree of the State Administrative Court (PTUN) of Makassar no: 26/G/2014/P.TUN.Mks. 26 June 2014 between Andi Maddusila Bin Andi Idjo and Bambang Sumijono above the same land. Andi Maddusila Bin Andi Idjo as the plaintiff has a land parcel located in Panaikang village, Panakukang district, Makassar city, South Sulawesi province based on the letter written by Andi Idjo Karaeng Lalolang on 23 June 1958 (plaintiff’s father) which declared that the land had been owned by the plaintiff since 1958. He just knows that there is another certificate issued by the defendant by each is VIII dispute object. The defendant does not check the physical and the juridical data on issuing the certificate so that the certificate of the disputed object I until dispute object VIII is issued on behalf of in part of the plaintiff’s land. (Directory of the Supreme Court of Republic of Indonesia decree.mahkamahagung.go.id. D E C R E E number: 26/G/2014/P.TUN.Mks).

d) Double certificate in Ponorogo Regency. The dispute begins when TOEKIMIN, the holder of SHM no. 177 of 1985 m<sup>2</sup> land on Bungkal village, intends to do separation in 2017. After being measured and doing the 1485m<sup>2</sup> separation, it is found that there has been an SHM no. 1193 of 2001 on behalf of Sunaryono and an SHM no. 1197 of 2002 on behalf of Peny Sapto Wardani above the rest of the 583m<sup>2</sup> land parcel. After conducting discussions, Toekimin must involuntarily lose his right.

<sup>2</sup> Bachtiar Effendi. (1993). Pendaftaran Tanah di Indonesia dan Peraturan Pelaksanaannya. Bandung: Alumni. p. 29.

positive system, the truth of the presented data is secured and is not only as strong evidentiary instrument.<sup>3</sup>

This is outlined in Article 19 paragraph 2 item c UUPA which states that registration covers" the issue of certificates of rights on land, which will be valid as strong evidence". Moreover, on article 23,32, and 38 of UUPA states that "The registration constitutes as strong evidence". Strong does not mean absolute, in other words, registration does not strengthen the proof of ownership. The registered holder is not protected by law and can be sued as it is explained in the description of PP no.10 of 1961.<sup>4</sup> "Certificate is valid as a strong evidentiary instrument" is as long as it cannot be proven otherwise. The physical and the juridical data set out on the Survey document and the land book shall be accepted as correct data. Thus, the physical and juridical data set out on the certificate shall be under the data set out on the holder's Survey document and Land book (Boedi Harsono., 1999: 464).<sup>5</sup>

However in article 32 paragraph 2 of PP 1997, it is stated that "In the case of a land parcel for which a certificate has been legally issued on behalf of a certain individual or a corporate body that has acquired the land parcel in question in good faith and has in reality been possessing it, any other parties which think they have rights thereon can no longer claim for these rights in the case where, within five (5) years following the issuance of the said certificate, they never raised their objections in writing to the holder of the certificate and to the Head of the relevant Land Office and never filed a lawsuit with the court over the possession of the land parcel in question or the issuance of the said certificate". It means that since the issuance of the certificate until 5 years following the issuance of the said certificate, the holders of the right of the land may lose their right if other parties can prove otherwise.

From the description above, there are many weaknesses since in the negative but positive-tended publication system the result is inaccurate and there is no state warranty. Certificate means strong evidentiary instrument as long as there is no third party's claims/ proofs. It means that information contained within it possess a legal force and shall be accepted as correct information as long as there are no evidentiary instruments that prove otherwise.<sup>6</sup> In this system, the government passively accept what is being stated by the registrant. Consequently, it can be claimed by other parties who believe they reserve the right over the land anytime.

Therefore, the role of Village Government as the institution who knows the field condition is needed to actively participate in the land registration during the first-time land registration on the Land Registry Office at the Regency level. The basis of the duty assigning to the Village Government is:

- Article 33 paragraph (3) of UUD 1945 (the 1945 Constitution) states that "the land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people". The powers are then delegated to the regional government as article 18 paragraph (1) of UUD 1945 states that "*The Unitary State of the Republic of Indonesia shall be divided into provinces and those provinces shall be divided into regencies (Kabupaten) and municipalities (Kota), each of which shall have regional authorities which shall be regulated by law.*". It means that the local governments are authorized to manage their domestic matters including land affairs. The regulation aims to manifest the region's advancement and local community' welfare. The region 'welfare includes the village community' welfare.
- Law no. 6 of 2014 about the village is the basis of the acknowledgement of Village Government as the legal institution to manage the village community' needs. Article 1 paragraph 1 of the Law no.6 of

<sup>3</sup> Boedi Harsono. (1999). Hukum Agraria Indonesia. Revised Edition. Jakarta: Djambatan. p. 83.

<sup>4</sup> Badan pertanahan nasional, himpunan karya tulis pendaftaran tanah. (1989). p. 44.

<sup>5</sup> Boedi Harsono. (1999). Hukum Agraria Indonesia. Edisi revisi. Jakarta: Djambatan. p. 464.

<sup>6</sup> Arie S. Hutagalung, "Penerapan Lembaga Rechtsverwekin untuk mengatasi Kelemahan Sistem Publikasi Negatif Dalam Pendaftaran Tanah", Hukum dan Pembangunan No.4 (October-December 2000), p. 328.

2014 about village state that "The village is a village and traditional village or called by other names, hereinafter called the Village, is a unit of community that has boundaries with the authority to regulate and manage the affairs of government, the interests of local communities based on community initiatives, the right of the origin, and/ or traditional rights recognized and respected in the system of government of the Republic of Indonesia."

- The regulation of Minister of Home Affairs of Indonesia no. 44 of 2016 about the Village authorities on article 1 paragraph 12 states that the village authority is the authority possessed by the village including authority based on the origin of the right; village-scale local authority, authority assigned by the Government, Provincial Government, or the Government District/ City; and other powers assigned by the Government, Provincial Government, or the Government District/ City in accordance with the provisions of the legislation.

Article 6 states that the types of Village Authority as meant in Article 5 paragraph (2) item a includes:

- a. authority based on the origin of the right;
- b. Village-scale local authorities;
- c. Authority assigned by the Government, Provincial Government, or the Government District/ City; and
- d. Other powers assigned by the Government, Provincial Government, or the Government District/ City under the provisions of the legislation.

- The regulation of Minister of Village, Development of Underdeveloped Regions, and Transmigration of the Republic of Indonesia no. 1 of 2015 about the guidelines of authorities based on the right of the origin and village-scale local authorities in.

- Chapter 3 of the Village-scale local authorities in article 5 state that the criteria of village-scale local authorities include:

- a. Authorities that prioritize the service and empowerment of the community;
- b. Authorities that possess regulation and activity only within the scope of the village and affect the village internally;
- c. Authorities that is in accordance with the villagers' daily needs and interests;
- d. Events run by the Village based on the community' initiatives;
- e. Central government' event programs, provincial government event programs, or the Government District/ City event programs which have been assigned and managed by village; and
- f. Village-scale local authority that has been regulated by the constitution of authority division of central government, the provincial government, and the regional government of regency/district.

- Article 7 states that Village-scale local authority includes:

- a. village governance field,
- b. Village development;
- c. Village community; and
- d. Villagers empowerment

- Article 8 states that Village-scale local authority in village governance field includes:
  - a. the stipulation and the affirmation of the village border;
  - b. the development of the village administration and information system;
  - c. the development of the village spatial planning and social map;
  - d. the registry and classification of village workers;
  - e. the population registry of the agricultural-sector and non-agricultural sector workers;
  - f. the population registry based on the working age, labor force, job seeker, and labor force participation level;
  - g. the registry of the working population whose age is 15 years old and above by working types, working fields, and working status;
  - h. the registry of the population who works overseas;
  - i. the stipulation of Village government;
  - j. the forming of Village Consultative Body;
  - k. the stipulation of village office;
  - l. The stipulation village-own enterprise;
  - m. The stipulation of village budget;
  - n. The stipulation of village regulation;
  - o. The stipulation of inter-village cooperation;
  - p. The permit giving of Meeting Hall or Village hall use;
  - q. the registry of village potentials;
  - r. the provision of the right to manage the village land;
  - s. the stipulation of emergency status of the Village during the disaster, conflicts, disease, food trouble, security interference, and other extraordinary events in village-scale;
  - t. Village archive management; and
  - u. The establishment of security post and other posts following the needs and social condition of the community

However, the regulation of Minister of Village, Development of Underdeveloped Regions and Transmigration of Indonesia no.1 2015 about the guidelines of Authority based on the Right of Origin and Village-Scale Local Authority does not explain clearly about the village authority on the first-time land registration even though the preliminary evidence of the right of ownership over land parcel shall be issued by the village government. Village government shall warrant the truth of data of the preliminary evidence.

- PP no. 24 of 1997 states that village chief possess strategic duties related to the assistance of land registration namely:
  - a. As the member of Adjudication committee to assist the land registration (Article 8 paragraph (2) of PP no. 24 of 1997);
  - b. are authorized to issue a statement letter that strengthens the right of the ownership of the person who owns the land parcel (article 39 paragraph (1) of PP No. 24 of 1997);
  - c. For the district areas located far away from the area of Land Registry office, the letter of Head of land registry office can be strengthened by the Village chief statement letter (article 39 paragraph (1) of PP No. 24 of 1997);
  - d. The village chief is authorized to issue an heir's document (Article 39 paragraph (1) PP No. 24 of 1997);
  - e. For people in the remote area, the Head of National Land Authority can appoint the Village Chief as the temporary land deed official (PPAT). (Article 7 paragraph (2) PP No. 24 of 1997);
  
- The ministry of agrarian no.3 of 1997 about the provision of execution of PP no. 24 of 1997 about the land registration
  - a. Article 76 paragraph (1), (2), and (3)
    - (1) Application, as meant in article 73 paragraph (2) item c, shall be along with original document states that the applicant holds the right as meant in article 24 paragraph (1) item g of PP no. 24 of 1997, namely:
      - g. right transfer deed made underhand that is signed by the village chief, Adat Chief which is made before the time of enactment of this Government Regulation with the inclusion of the basis of the right being transferred, or
    - (2) If the proof of ownership over the land parcel as meant in paragraph (1) is incomplete or not exist, the proof of ownership over the land parcel can be made by the statement written by the applicant and statement of at least 2 (two) witnesses from the community who do not have consanguinity within the second civil degree with the applicant horizontally or vertically, which state that the applicant is the rightful owner of that land parcel.
    - (3) in case that the proof of the land parcel ownership as meant in paragraph (1) and (2) is not exist, the application shall be accompanied by:
      - a. a statement letter from the applicant that states:
        - 1) that the land parcel in question has been physically possessed for twenty (20) consecutive years or more by the person applying for the registration of the right in question and his/ her predecessors;
        - 2) that the land possession has been done in good will;
        - 3) that the land possession has never been accused and it is deemed and is condoned by the village community;
        - 4) that the land parcels are not under dispute;

- 5) that if the statement contains the thing that is not in accordance with the fact, the signer is willing to be accused in front of The Judges either civil or criminal for giving false information;
- b. the statement of Village chief and at least 2 (two) witnesses who is reliable for their functions are as the elders and/ or resident who have domiciled for a long time in the village where the land parcel is located and not having consanguinity with the applicant within the second civil degree both horizontally or vertically, which warrant that the applicant' statement in the statement letter, in accordance with the form in appendix 14.

Based on the explanation above, the village government shall be involved to the maximal extent, deeper and clearer in the first-time land registration to minimize conflicts.

The overlapping and double certificate indicate that the involvement of the village government is less powerful. However, the village government' involvement on the first-time land registration shall also be noticed on the violation done by the village government themselves. A case occurs in Bancangan village of Ponorogo regency. The problem in Bancangan village begins when Misrati, the owner of 1400 m<sup>2</sup> land parcel with Letter C book no. 1338 parcel 35b. Class DIII does not think she sells her land parcel, while in fact, there have been issued an SHM no. 288 on behalf of Drs. Fahrurrozie. Even, there has been an application for a dispute between Misrati and Drs. Fahrurrozie in the Ponorogo District Court with no. of register 33/Pdt.G/2014/PN.Png. The root of this problem is that the Village Chief falsifies the sales and purchase receipt as if Misrati has sold the land to Drs. Fahrurrozie. Because of this dispute, Misrati as the rightful owner of that land parcel gets many losses.

Learning from that case, it is important to improve the land registration in Indonesia. The first thing shall be improved is the land registration system, by still using the negative system with a strengthened role of village government. Besides, National Land Agency through Regional Land registry office shall administer the land registration based on safe principle, strengthen the human resources qualitative and quantitatively, and observe the land registration materially. It is important since all the time, the evidentiary power accepted by The Land Registry Office done formally without knowing the physical validity. More harmonious and continuous relation between Land Registry Office and Village Government in the land registration is important. More broadly, the relation between Land Affairs Office and the Village Government shall be accompanied by particular attempts to warrant the legal certainty of land registration. Attempts can be made through Community-based land management that includes:

- a. Improving the Village government understanding about their position in the land registration and providing the human resources for the administration of land management through training programs;
- b. Socialization towards the Village Government and the community related to the importance of the land registration, and the domicile of Village government in the first-time land registration;
- c. It is necessary to do periodical supervision towards the physical data and juridical data at the village level;
- d. It is necessary to have specific regulation about technical instruction for Village government in issuing the letter as the preliminary evidence of land registration and about the village authority in the land registration. Socialization of village administration order. Village administration order is important since to date there are many problems begin because Letter C book is lost/ is not found, so the data of the land parcel is not clear. Whereas, the availability of land parcel data can be used for:
  - The identification of ownership, possession, and border in the field;
  - The identification of land parcel related to RTRW and rice field zoning;
  - The identification of Taxable object–PBB;

- The identification of location permits, planned land provision;

For residential housing, conservation etc;

- The service of the statement of the right over the land parcel (committee A), location permit;

Land provision etc.

- e. Regulation, arrangement, and problem solving of possession and use of land parcel to the space function in accordance with the spatial planning plan;
- f. The improvement of current regulation is necessary. A regulation will be equitable if it is directed to the Communal regime. Communal regime happens when resources are possessed by the clearly-identified community and it can regulate and prohibit outsiders to use the resources. Regulation related to TGT program, regional retribution and tax bodies in the land service (data) is important to be manifested;

The attempt mentioned above is one of the good land management in the village level; however, the participation of all landowners and land parcel-basis village administration are important to be intensified.

The domicile of Village Government on the first-time land registration is needed since it is related to the legal certainty and justice for the owner. Village government as the party who legalizes and who is aware of the documents of preliminary evidence in the first-time land registration shall be careful in issuing the preliminary evidentiary instruments in the first-time land registration<sup>7</sup>. The attempts above are important to be manifested to warrant the legal certainty.

### **Conclusion**

Negative publication system on Indonesia Agrarian law leads to the uncertainty of the land ownership which results in conflicts. A strong optimization towards the function of Village Government in the land registration is necessary. This is in line with the theory of communal-based natural resource management.

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