



Politik of economy law in Indonesia: Land certification program in the framework of legal certainty on land title and its impact on community economic empowerment

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Abstract

The importance of land registration or certification, with assumption after the land has been officially and legitimately registered, the owner may use it as living capital, for example for bank credit collateral. Land title and ownership stated in the Titles are the products of land registration activities that is the granting of ownership guarantee of land or property title. This activity is carried out by the government as a means of legal protection for holders of land title as stipulated in the Basic Agrarian Law Number 5 of 1960 or it is also called as the activity of determining the legality aspect of land ownership. The land certification program can basically support the development of investment in each region, but there is legislation that can inhibit the development of investment, especially related to the problem of licensing and land certification for plantation investment and the provision of certificate of Freehold Title and Cultivation Rights.

Keywords: land certification, legal certainty, land title, community economy empowerment

Introduction

Nowadays, the need of land is increasing simultaneously with the increase in total population and other needs relating to land. Land is not only functioned as a place to live and farm, but it is functioned as a guarantee to obtain bank loans and for the purposes of sale & purchase and lease. Because the function of the land is important for individual and legal entity, so it requires guarantee of legal certainty over the land^[1].

Land is an important and strategic resource because it concerns in livelihood of Indonesian people that is very basic. Besides, land has multi-dimension, multi-sectoral, and multi-discipline characteristics and it also has high complexity. As it is known, land is a matter that is full of various interests, whether economic, social, political, even for Indonesia, the land also has a religious value that cannot be measured economically. The constant nature of the land and the increasing number of people who need the land increases the value of the land^[2].

Existence of land in human life has a meaning and dual function, namely social assets and capital assets. As a social asset, land is a means to bind social unity among the people to live and life, while as a capital asset, land is a capital factor in development and it has grown as a very important economic object as well as commercial materials and speculation objects^[3].

The agrarian law should provide the possibility that the

function of the earth, water and space can be achieved and it must be in accordance with the interests of the people and the nation. In addition, it also should meet the people and nation's needs according to the demand of the times in all agrarian matters. Furthermore, the national agrarian law must embody the incarnation of spiritual principle of the country and the ideals of the nation, namely the Belief in one God, Humanity, Nationality, Democracy and Social Justice and in particular must be the implementation of provisions of Article 33 paragraph (3) of the Constitution 1945 of the Republic of Indonesia stipulating that "The land, the waters and the natural resources therein are basic assets for the people's prosperity and should, therefore, be controlled by the state and exploited to the greatest benefit of the people"^[4].

Land registration aiming to provide guarantee of legal certainty is known as *rechts cadaster/legal cadaster*. Guarantees of legal certainty that will be realized in this land registration, including the certainty of the title status on the list, the certainty of the titles subject, and the certainty of the title object. This land registration issues a certificate as a proof of its title. The opposite of land registration that is *rechts cadastre*, is the *cadastral fiscaal* that is land registration aiming to determine who is obliged to pay tax over the land. The land registration issues a receipt of tax payment on land, that now it is known as Notification of tax due of Land and Building (SPPT PBB)^[5].

The provisions regarding Land Registration shall be further stipulated in Government Regulation No. 24 of 1997 on

¹ Florianus S.P Sangsun, 2008, Procedure for Land Certification, Visimedia, Jakarta, p. 1

² Ibid

³ Achmad Rubaie, 2007, Land Provision Law for Public Interest, Bayumedia, Malang, p. 1

⁴ Ibid

⁵ Urip Santoso, 2012, Agrarian Law of Comprehensive Study, Kencana, Jakarta, p. 278

Land Registration hereinafter referred to in Government Regulation Number 24 of 1997, which came into force on 8 October 1997 in lieu of Government Regulation Number 10 of 1961 on Land Registration, which since 1961 have regulated the execution of Land Registration as ordered by Article 19 of Law Number 5 of 1960 on the Basic Agrarian Law, which stipulates that ^[6]:

1. In order to guarantee legal certainty by the Government, land registration shall be applied across the territory of the Republic of Indonesia in accordance with the provisions stipulated by Government Regulation
2. The registration referred to in paragraph (1) of this Article includes:
 - a. Measurement, mapping and accounting of land;
 - b. Land registration rights and transfers of those rights;
 - c. Issuance of proof of title letter that is valid as a powerful evidentiary instrument.
3. Land registration shall be carried out by taking into account the condition of country and society, the need for economic social traffic and the possibility of its operation, in consideration of the Minister of Agrarian Affairs
4. Government Regulation stipulates the costs relating to the registration referred to in paragraph (1) above, provided that underprivileged society shall be exempted from payment of such costs.

The provisions of implementation shall be further stipulated in Regulation of the Minister of Agrarian Affairs/Head of National Land Agency Number 3 of 1997 on the Provisions of Implementation of Government Regulation Number 24 of 1997 on Land Registration.

The Government undertakes land registration activities by referring to an institutionalized system as performed in the registration activities during this time, starting from the application of an individual or entity and then it continues with the data processing until the issuance of proof of their title (certificate) and eventually the registration data is recorded in the land book ^[7].

The authority of the Government to regulate land affairs in land use is based on the provisions of Article 2 paragraph (2) of Basic Agrarian Law on the authority to regulate and organize allotments, uses, inventories and maintenance, and to determine and regulate legal binding between individual and the earth, and the individual and legal acts regarding the earth, water and space ^[8].

The purpose of the land registration is stated in the Basic Agrarian Law Article 19 paragraph (1) stating that "to guarantee the legal certainty, Government shall apply Land Registration across the territory of the Republic of Indonesia according to the provisions regulated by Government Regulation." In Article 19 paragraph (1) of Basic Agrarian Law, it is intended that the Government has an obligation to make sure that its people carry out land registration, therefore legal entity can be achieved and land dispute can be minimized ^[9].

The emergence of deregulation in July 1992 which was later

established in deregulation in October 1992 aiming to attract more investment in Indonesia is the government's proper step in operating the economy to the district/city level. The main point of the deregulation policy in October 1992 was basically the simplification of the procedures for granting Right of Cultivation (HGU) and Building Rights on Land and the presence of different settlement time limit by the society and potential investors ^[10].

The society further considers in relation to investment, the government had issued Presidential Regulation no. 36 of 2005 on the Provision of Land for the Implementation of Development for Public Interest and it had been revised by Presidential Regulation no. 65 of 2006. However, this presidential regulation provided strong compensation guarantee for society whose land was taken over for development activities, while the investors consider it as unattractive because the status of the land and the period of land use are unclear ^[11].

The commencement of the policy in the field of land cannot be separated from the enforcement of Law No. 5 of 1960 containing the Basic Agrarian Law which is the main basis regarding regulation of land law in Indonesia. There is involvement with the National Land Agency of the Republic of Indonesia, in which Law No. 25 of 2007 regulates ease to obtain access to land title for investment purposes. It is stated in Article 21 that the government provides ease of service and/or licensing to investment companies to obtain land title. It is further stipulated in Article 22 that the acquisition of land title is by regulating the types of land title, period and extension of land title ^[12].

Philosophically, land registration or certification is essential, with assumption after the land has been officially and legitimately registered, the owner may use it as living capital, for example for bank credit collateral. Land title and ownership stated in the Titles are the products of land registration activities that are the granting of ownership guarantee of land or property title. This activity is carried out by the government as a means of legal protection for holders of land title as stipulated in the Basic Agrarian Law Number 5 of 1960 or it is also called as the activity of determining the legality aspect of land ownership ^[13].

Government policy in the regulation on land in investment in Indonesia is increasingly important to increase investor interest in Indonesia and the development of the capital market itself. Given that land is very important in investment, then government policy should be oriented for ease of investment. The amendment was marked by the enactment of the Investment Law No. 25 of 2007 on Investment that is pro investor, by granting licensing permits, the proportion of capital ownership of above 75 percent, as well as land use permit for more than 25 years. It was made by the government in order to increase investment to change economic potential into a real strength, either using capital that derives from within the country or abroad

⁶ Article 19 of Agrarian Basic Law

⁷ Yamin Lubis and Rahim Lubis, 2010, Land Registration Law, CV. Mandar Maju, Bandung, p. 104

⁸ Ibid

⁹ Ibid

¹⁰ Amir A., "Analysis of Impact of Land Certificate Program on Access to Banking Credit and Income Increase of Farmers in Bekasi Regency", Post Graduate Thesis, Master in Management and Business Studies, Post Graduate School, Bogor Agricultural University, 2008

¹¹ Ibid

¹² Ibid

¹³ Ibid

[14]. The Investment Law seeks to accommodate existing regulations, such as Law no. 1 of 1967 in conjunction with Law no. 11 of 1970 on Foreign Investment, and Law no. 6 of 1968 in conjunction with Law no. 12 Year 1970 on Domestic Investment. The Rules of the Investment Law are applicable for the investors throughout Indonesia, provided that it is only limited to direct investment, the investment policy aims to create a conducive, promotive, equitable investment and provide legal investment and efficiency while maintaining national interest [15].

Land is an important and strategic resource because it concerns in livelihood of Indonesian people that is very basic. Besides, land has multi-dimension, multi-sectoral, and multi-discipline characteristics and it also has high complexity. As it is known, land is a matter that is full of various interests, whether economic, social, political, even for Indonesia, the land also has a religious value that cannot be measured economically. The constant nature of the land and the increasing number of people who need the land increases the value of the land.

In juridical terms, the basic policy of land in Indonesia is contained in Law No. 5 of 1960 on Basic Agrarian Law (BAL). Land management is carried out through arrangement mechanism of land use, arrangement of land possession, application of land title, and land registration. Types of land title is stipulated in Basic Agrarian Law: land title, Right to Cultivation, Building and Land title, Right of Use, Right to Rent, and Right to Clear Land and to Harvest Forest Product, and other Temporary Rights, Right to Use Water, Fish Breeding and Farming, Right to Use Space [16].

Based on the author's research results on the land certification in Indonesia, the data obtained showed the number of land that has been certified nationally only reached 54.46%.¹⁷ This indicates that there are still many lands, either in the form of yard land or agricultural land that has not been certified and not yet registered in land management system of National Land Agency (BPN).

Sociologically, land certification programs can basically support the development of investments in each region, but there are legislation that may inhibit the development of investments, especially those related to licensing and land certification issues for plantation investment and the granting of Certificate of Freehold Title, Building and Land title and Right of Cultivation [18].

Subject to Article 7 of the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 2 of 2013 on the Delegation of Authority of Land Title and Land Registration Activity, it is stated that:

Head of Regional Office of National Land Agency gives decision regarding:

- a. Granting of right of ownership to individual over an agricultural land of more than 50,000 M² (fifty thousand square meters) and no more than the maximum limit of individual agricultural land ownership.
- b. Granting of right of ownership to individual over a non-

agricultural land of more than 3,000 m² (three thousand square meters) and not more than 10,000 M² (ten thousand square meters).

- c. Granting of right of ownership to a religious and social legal entity established pursuant to Government Regulation Number 38 of 1963 on the Appointment of Legal Entities which may have Land Ownership Title over non-agricultural land of more than 50,000 M² (fifty thousand square meters) And not more than 150,000 M² (one hundred and fifty thousand square meters) [19].

Subject to Article 8 of the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 2 of 2013 concerning the Delegation of Authority of Land Title and Land Registration Activity, it is stated that: Head of Regional Office of National Land Agency gives a decision regarding the granting of Right of Cultivation to a land which area is not more than 2,000,000 M² (two million square meters) [20].

This means, for the land which area is more than 200 ha, its authority to grant land title and land registration activities, especially the Right of Cultivation is in the hands of the National Land Agency. This provision is clearly a regulation that can inhibit the development of investment, especially in the field of plantation because the need of land in the field of plantation is usually more than 200 ha.

Whereas subject to the provisions of Article 9 of Regulation of the Head of National Land Agency of the Republic of Indonesia Number 2 of 2013 on the Delegation of Authority of Land Title and Land Registration Activity, it is stated that:

Head of regional office of national land agency gives decision regarding

- a. Granting Building Rights on land for individual over the land which area is more than 3,000 M² (three thousand square meters) and not more than 10,000 M² (ten thousand square meter);
- b. Granting Building Rights on Land for legal entity over the land which area is more than 20,000 M² (twenty thousand square meter) and not more than 150,000 M² (one hundred and fifty thousand square meter) [21]

This research will focus on land certification programs in the context of legal certainty on land title and their impact on the society economic empowerment. The number of land in Indonesia that has not been certified causes the investors to be reluctant to invest in Indonesia. As for the economic level, Indonesian society, people whose land already has an economic certificate can be said to be better than people whose land has not been certified. People whose land has been certified may use their land certificate as collateral to

¹⁴ Usman, Marzuki, et al., 1990, Indonesian Capital Market ABC, Institut Bankir Indonesia, Jakarta, p. 67

¹⁵ Ibid

¹⁶ Government Institution's Performance Accountability Report of the National Land Agency of the Republic of Indonesia 2013

¹⁷ Ibid

¹⁸ Ibid

¹⁹ Article 7 of the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 2 of 2013 on the Delegation of Authority of Land Title and Land Registration Activity

²⁰ Article 8 of the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 2 of 2013 concerning the Delegation of Authority of Land Title and Land Registration Activity

²¹ Article 9 of Regulation of the Head of National Land Agency of the Republic of Indonesia Number 2 of 2013 on the Delegation of Authority of Land Title and Land Registration Activity

the bank to obtain additional business capital, so that its business will be more developed.

Research Problems

Based on the description above, the problem in this research can be formulated as follows: How is the juridical construction of land certification in terms of legal certainty over land title and its impact on the society economic empowerment?"

Discussion

1. Land Definition and Basic Land Law

It is the same as we talk about the notion of "law", the term of Agrarian Law also has several meanings. In the governmental environment, the term Agrarian Law covers a definition in a narrow scope, which is as part of the State Administration Law providing the legal basis for the authorities in carrying out its land politics, that is, the authorities to carry out acts that are deemed necessary in the field of land administration management. According to Boedi Harsono, "such authorities are included in the environment of the Administrative Land Law" [22].

Basic Agrarian Law in contrast uses the meaning of Agrarian Law in the broadest sense; because agrarian definition includes: earth, water and wealth contained therein. The definition also covers the space, which its application is limited to "energy and elements in space to maintain and develop the fertility of earth, water and natural resources contained therein and other things that relevant with it". Agrarian Law in the broad definition is a group of various fields of law, namely land law, water law, mining law, fisheries law and possibly also space law and forestry law.

The name of Agrarian Law in Higher Education of Law is generally used in the sense of Land Law or The Law of Real Property, which is the branch of Indonesian Legal Law which regulates the rights of land ownership. Law No. 5 of 1960 on our national Basic Agrarian Law, since its enactment on 24 September 1960 to the present day, there is still lack of understanding on the background and conception underlying the Basic Agrarian Law establishment due to lack of socialization. Then it also leads to the wrong perception on Basic Agrarian Law and misinterpretation on its provisions [23].

To understand the relationship between jurisprudence and positive law that is synonymous with the rule of law, so it is necessary to review elements of law, such as riel and idiil elements. The real element consists of humans, cultures and the natural environment. The idiil element includes the ethical desire and the human ratio; idiil element will produce legal principles (*rechts beginzelen*) for example the principle of equity and social justice [24].

While the human ratio produces general legal concept (*rechtsbegrippen*) for example on the legal subject, rights and obligations, legal events, the relation between legal and

legal objects. In the definition of the National Land Law, conception or the concepts underlying the National Land Law in finishing the Land Law shall be discussed.

Article 3 of the BAL affirms that Customary Communal Land Rights still exist, but Ter Haar Bzn states unequivocally that to provide protection to a legal act in a land transaction, it is necessary to cooperate with the heads of society or village chief because they will be responsible for The transaction [25], Article 3 of the BAL affirms that Customary Communal Land Rights still exist, but Ter Haar Bzn states unequivocally that to provide protection to a legal act in a land transaction, it is necessary to cooperate with the heads of society or village chief because they will be responsible for The transaction, and the transaction shall be "transparent" and "cash" or according to the Batak people in Bagasan Tribe and in "open" and "guaranteed" legal traffic, and the Village Chief is given a sum of money that is called as *pago-pago* by Batak people [26].

In addition to having a deep inner value for Indonesian people, land also functions strategically in meeting the increasingly diverse needs of the state and people, both nationally and internationally. Although in general, land can be traded but in the eyes of Indonesians who have not been influenced by the conception of Western notion yet, land is not a commodity trade, as can be seen from the attitude and actions of some entrepreneurs in conducting their economic activities. Land is not an object of investment, moreover the object of speculation. Land as a gift from the Almighty God to the nation, is one of the main sources of survival and livelihood of the nation in achieving the greatest prosperity of the people equally and equitably [27].

Land in the legal sense means the surface of the earth, this can be understood through the provision of Article 4 of BAL [28], which is fully formulated: "On the basis of the right of control of the state as referred to in Article 2 specified the existence of various rights to the surface of the earth, called land, which may be granted to and possessed by each person or together with other persons and legal entities".

In Code of Civil Law, land referred to commonly use term as *Grond* or *Grond Eigendom*, namely "Land" or "Land Ownership". However, because Code of Civil Law is not applicable to indigenous groups, the term *Grondrechten* for Land Law becomes unusual for indigenous populations. Along with the enactment of Agrarian Law of the Dutch East Indies, namely *Agrarische Wet 1870*, which then translated into Agrarian Law, then the term Agrarian Law became commonly used today. While the term Land Law is not commonly used [29].

2. Land Registration

As it is known, land registration aims to obtain form of legal certainty and certainty of rights for holders of land titles.

²² Budi Harsono, 1987, National Agrarian Law in Higher Education in Indonesia and National Development, Speech for inauguration of Professor of Agrarian Law of Trisakti, Jakarta, p. 10

²³ Ari Sukanti, 2003, Speech for Innaguration of Professor of Faculty of Law, University of Indonesia, Jakarta, September 7, 2003

²⁴ Budi Harsono, Op. Cit., p. 4-5

²⁵ Article 6,7,10 and 11 of Agrarian Law

²⁶ Ter Haar Bzn Mr, 1950, *Benginselen en Stelsel van Adat Recht* 1, B Walter Groningen, Jakarta, p. 80

²⁷ Ibid

²⁸ Decree of People's Consultative Assembly of the Republic of Indonesia No. IX/MPR/2001 on Agrarian Reform and Natural Resource Management;

²⁹ Budi Harsono, 2003, Toward Completion of National Land Law on Relation Decree of People's Consultative Assembly of the Republic of Indonesia IX /MPR/2001, Trisakti University, Jakarta, p.3

With the land registration, it is expected that a person holding the land title will feel safe, there is no disruption of the rights that belong to a plot of land. The law and registration of this land is a form of a legal event that is highly owned by a person^[30]. This right of equality if reviewed in depth is a form of manifestation of substantial Human Rights owned by someone who must be upheld and respected by others.

Pitlo, stated that when registering the land titles, the personal legal relationship between a person and the land is announced to a third party or community^[31]. From the land title on a third party is deemed to know that a legal relationship exists between a person and the land in question to know the legal relationship between the person and the land concerned, for which he becomes bound and shall respect the right as an obligation arising out of propriety.

Here are some land registration systems according to Parlindungan, namely: Registration of Torrens ground system Registration of Negative ground system Registration of Positive land system^[32]

The land registration system used by a country depends on the legal principle adopted by that country in transferring its rights. Meanwhile, if in terms of guarantees provided with the certificate of proof of rights as a means of proof, then emerges various types of land registration system, among others:

a. Positive System

A positive system in the sense of land registration means that what already listed is guaranteed to be the true state of evidence. The Government, in this case the National Land Affairs Agency guarantees the land which has been registered by its owner and for the purpose of truth and validity of each legal written proof submitted for registration in pre-determined lists.

According to Aris S. Hutagalung, that the positive land registration system can be met in the Anglo-Saxon countries, namely England and its colonies. The way data is collected on this positive system is using the registration of "titles" or concrete legal relationships, namely their rights^[33].

b. Negative System

Land registration that subject to a negative system, resulting in a person whose name is listed on the land list is not an absolute owner or, in other words, the registration of a person in the register of land as the right holder has not proved absolutely that the person holds the right.

The above description is in line with the views expressed by Effendi Warin which stated as follows:

"... on the negative system, the proof-of-title certificate applies as a powerful evidentiary means, the statements contained therein shall have the force of law and shall be accepted by the (Judge), as true information, as long as there is no other means of proof which prove otherwise. In this case, the court will decide on the correct proof means^[34]

³⁰ Bachtiar Effendi, 1992, Land Registration, Alumni, Bandung, p. 46

³¹ Herman Soesangobeng, 2001, Advanced Agricultural Law Course, Magister Program STIH "IBLAM" Jakarta.

³² AP Parlindungan, 1989, Termination of Land titles according to BAL System, Mandar Maju, Bandung, p. 130

³³ Aris S. Hutagalung, 1994, Principles of Agrarian Law, University of Indonesia Press, Jakarta, p.80

³⁴ Effendi Warin, 1994, Agrarian Law in Indonesia: A study from the point of view of Legal Practitioner, Rajawali, Jakarta, p.98

According to Arie S. Hutagalung that a negative land registration system is applicable in European countries continental such as the Netherlands and Indonesia before BAL, which is based on Oversichrijvings-ordonantie S.1834 - 27. The way of collecting data on this system is the registration of "deds" Or legal action^[35].

c. Grundbuch System

This system is a land registration system, where a right to land prior to registration is firstly examined by the government, whether the person registering the land is indeed the true owner. Thus the Grundbuch system is similar to a negative system^[36].

d. Torrens System

As the name suggests, this system was first created by Sir Robert Torrens in South Australia. Torens system is better known by its original name The Real Property Act or Torrens Act which came into effect in South Australia since July 1, 1858. Today, land registration with Torrens system is used by several countries, such as Algeria, India, Singapore, Tunisia, Congo, Spain, Norway, Malaysia, Fiji Islands, Canada, Jamaica, Trinidad. Sistem *Torrens*

Answering the questions above R. Suprpto states that: "The land registration system that we use is a positive registration system with a positive tendency, meaning that land registration rights is carried out on the basis of positive data, the officer assigned to perform the registration is an officer who has the authority to test the validity of the data used as the basis of registration of rights. Registration is a guarantee of legal certainty and strong evidence, but it can still be denied, sued in court^[37].

e. Systematic System

The understanding of the systematic system in land registration is a simultaneous land registration activity covering all plots of land in an area or territory of a village, whether the land is owned by a right to land or state land^[38]. The land registration system used is the registration of titles, as used in the implementation of land registration according to Government Regulation No. 10 of 1961. It is apparent with the existence of a land book as a document containing juridical data and physical data collected and presented as well the issuance of a certificate as a certificate of title to the listed land^[39].

3. Juridical Construction of Land Certification in the Framework of Legal Certainty of Land titles and Its Impact on Community Economic Empowerment

Land is an important and strategic resource because it involves the basic livelihood of all the people of Indonesia. In addition, the land also has characteristics that are multi-dimensional, multi-sectoral, and multi-disciplinary and have a high complexity. As it is known that the land problem is a problem that is full of various interests, whether economic, social, political, even for Indonesia, the land also has religious value that cannot be measured economically. The constant nature of the soil and the increasing number of

³⁵ Arie S Hutagalung, Op. Cit., p.80

³⁶ Ibid

³⁷ R. Suprpto, 1986, Basic Agrarian Law in Practice, CV. Mustati, Jakarta, p. 324

³⁸ Arie S. Hutagalung, Op. Cit., p. 81

³⁹ Irawan Soerodjo, 2003, Law Certainty on Land Title in Indonesia, Arloka, Surabaya, p. 108

people in need of the soil further increase the value of the land.

To prevent widespread land disputes, the government registers land titles that will generate land certificates. The existence of a certificate of land issued is a proof of ownership of a plot of land, here the holder of the land title certificate has obtained legal protection and is guaranteed by law on the land it owns, meaning that if there is a land dispute where in the presence of certificate owned by the holder of the certificate then the legal status of the holder of the certificate is strong and the judge is obliged to consider the evidence of the certificate as a valid and strong evidence in addition to considering other means of evidence.

The provisions of the force of the law of the certificate have been stated in Government Regulation Number 24 of 1997 concerning Land Registration that the certificate is a proof letter that serves as a powerful evidentiary means of physical data and juridical data contained therein. Here what is meant by physical data is data concerning the location, boundary, and area of the land concerned, then, referred to as juridical data which are data on the legal status of the land, land owners, and any rights that the land possesses. Concerning the definition of physical data and juridical data has also been described in Article 1 number (6) and (7) of Government Regulation Number 24 of 1997 concerning Land Registration.

Land registration is held to ensure legal certainty for the owner of the land concerned, this is in accordance with the sound of Article 19 paragraph (1) of Law Number 5 Year 1960 on the Basic Agrarian Law Principles (hereinafter referred to as BAL) which reads:

"To ensure legal certainty by the Government there is a land registration throughout the territory of the Republic of Indonesia in accordance with the provisions stipulated by Government Regulation."

In addition to land registration functions to ensure legal certainty for land owners, land registration also functions for the government and interested parties. For the government, here the government can find out the legal status of the land concerned, whether the listed land possesses a right of ownership, right to use, the right to use the building, or other rights. So here the government in taking a policy can take appropriate action against the land concerned. For interested parties such as entrepreneurs who want to build businesses on the land, or individuals who want to buy land, they are not worried or doubt about the land they will buy or already bought because they themselves know the legal status of the land.

Land registration system consists of the system of registration of deed and registration of rights. In the Deed Registration system, the land registry officials only register for the land concerned, here the land registry officials do not test the veracity of the data listed. In the event of a transfer of rights, the making and registration of rights shall be made by the relevant official on the same day or the term shall be made directly on the same day, when the buyer as the holder of the right shall obtain a copy of the deed as a proof of his right. Each time a rights change is made, the deed is made as evidence, and the necessary juridical data is sought in the deeds.

The disadvantage of the registration system of deeds that the discrepancy in a deed may result in the illegality of a legal act to be committed, whereby a new deed made as evidence is based on a previous deed that is false or contains legal

defects, for example, data on land boundaries that are not in accordance with actual, later it is made as evidence to perform a new legal act, it can be seen here that the legal act has contained legal defects or caused the illegal acts of the law. If this happens then the parties concerned should return to the land registry officer or also called the title transfer officer to change the wrong data in the deed.

In the registration system the rights registered are his right. In this system in any creation and transfer of rights shall be evidenced by deeds and other evidences. In the provision not only limited to the deeds listed but there are new rights created that gave birth to new evidence such as land certificates. Submission of deeds and other evidence is only as data source. It is different here that in the registration of rights it is not only determined by filing evidence, but here the land registry officer conducts research and testing of the listed land by coming to the land concerned for measurement, determination of limits, and other matters deemed need. This is done for the purposes and processing of physical data it is necessary to conduct measurement and mapping activities. This is in accordance with Article 14 of Government Regulation No. 24 of 1997 concerning Land Registry (hereinafter referred to as Government Regulation No. 24 of 1997).

Article 14

1. For the purpose of collection and processing of physical data, measurement and mapping activities are carried out
2. The measurement and mapping activities as referred to in paragraph (1) shall include:
 - a. Creation of the registration base map
 - b. Determination of boundaries of plot of land
 - c. Measurement and mapping of plot of land and making of registration maps
 - d. Land listing
 - e. Making a certificate of measurement

In general, land registration activities up to the maintenance activities of land registration data are stated in Article 12 Government Regulation No. 24 of 1997.

Article 12

1. Land registration activities for the first time include:
 - a. Collection and processing of physical data
 - b. Verification of rights and bookkeeping
 - c. Issuance of certificate
 - d. Presentation of physical data and juridical data
2. Maintenance activities of land registration data include:
 - a. Transition and burden of right registration
 - b. Registration of changes to other land registration data

Basically, there are two publication systems used in the implementation of land registration namely positive publication system and negative publication system. For land registration using a positive publication system, here the state as a registrant ensures that the registration has been carried out correctly and that the person registering as the holder of the land title is no longer inviolable.

According to Budi Harsono himself, with the completion of the registration on behalf of the recipient of the right, the right holder is actually lost his rights. It cannot demand the cancellation of a legal act that removes the rights to the buyer. In certain circumstances he can only demand the loss

to the State. To face the compensation is provided a special fund^[40].

In a negative publication system, the state as the registrant does not guarantee that the person listed as the right holder is the person who really deserves the right. Land registration does not get people to acquire land, then actually becomes a new holder of rights. The registered person is not necessarily the true rights holder, so if it turns out later there is a mistake, it can be done improvements.

The publication system used in the Basic Agrarian Law and Government Regulation 24 of 1997 is a negative publication system containing positive elements, as stated by Budi Harsono in his book entitled "Agrarian Law of Indonesia, History of the Establishment of Agrarian Law Indonesia, Contents and its Implementation." The negative publication system adopted is not a pure negative publication system because in Article 19 Paragraph (2) Sub-Paragraph c of the BAL states that land registration produces certificates of proof of rights, which are valid as a powerful evidentiary instrument.

From the statement of the article can be understood that the land registration produces a certificate of proof of rights that serves as a powerful evidentiary means not as an absolute proof means. Here, "powerful" is defined as what is stated in the land book and the land certificate is guaranteed as long as the data contained therein is true and cannot be proved otherwise, if later it turns out that the certificate of the land is known to contain legal defects, then the certificate of the land can be revoked and what has been listed in the certificate is considered never to exist anymore. Unlike the proving means that is absolute (embraced in positive publication system).

Absolute here means that the evidence is inviolable even if other evidence has been submitted to it, or even if it is true that the evidence is false. Then it is said that the land registration produces certificates of proof of rights, if we examine that in the land registration with a negative publication system will not produce a certificate of proof of rights such as land certificate, but only in the form of registration of deed only. But with a certificate of right in the form of a certificate indicates that the system used contains a positive publication system.

From the description above, we can conclude that the publication system adopted by Indonesian Government is a negative publication system containing the elements of fossil, considered as embracing the negative publication system if what is listed in the certificate can still be canceled if it can be proven that the data contained in the certificate is not true. While containing a positive element means that the land registration in Indonesia produces a certificate of right in the form of certificate which in the system of pure negative publication is not issued certificate but only in the form of registration deed, and the making of new deed as evidence for new owners.

In the legal literature there are two types of legal protection facilities for holders of land titles that are preventive and repressive. According to Hadjon on preventive legal protection to the people given the opportunity to file an objection or opinion before a government decision gets a definitive form. Thus, preventive legal protection aims to

prevent the occurrence of disputes, whereas on the contrary the repressive legal protection aims to resolve disputes.

Preventive legal protection is very significant for government actions that are not based on provisions of applicable rules. With the existence of preventive legal protections the government is encouraged to be cautious in making decisions based on a policy taken.

In relation to the legal protection of the certificate holder, the preventive legal protection can be in the form of established rules relating to land and land certificates. Here the relevant law has established legal rules that can be used as a guide in resolving land disputes and as a basis or basis in providing the protection of the law itself. One of the articles which states to provide absolute legal certainty for the holder of the certificate, namely Article 32 paragraph (2) Government Regulation No. 24 of 1997 which reads:

Article 32 paragraph (2)

"In a plot of land in which the certificate has been issued legally on behalf of a person or legal entity obtaining the land in good faith and in actual control, the other party who feels the right to the land can no longer insist on such implementation if within 5 years since the issuance of the certificate does not file a written objection to the holder of the certificate and the Head of the Land Office concerned nor to file a lawsuit to the court regarding the control of the land or the issuance of the certificate."

From the aforementioned chapters this means that the law has given way for the certificate holder to own the land that has been issued the certificate in absolute terms by not ignoring the other provisions, although in actual practice the lawsuit can still be filed.

Related to the repressive law protection that is legal protection after the occurrence of the dispute, the protection of repressive law aims to resolve the dispute that occurred. In the case of a land dispute the protection of repressive law may be granted in the form of a return to the original owner, meaning that the protected by law is the legal owner of the disputed land. In order to be able to restore the original rights to the original owner there must be a path that must be passed, in case of land dispute the disputing party will settle it through litigation (court) and non-litigation (out of court).

On December 7, 2015, the government finally released the December Economic Policy Package starting from the acceleration of land certification to tax incentives for labor-intensive industries. The government expanded the scope of incentives and ease-of-use, not only to labor-intensive industries, but also to increased services to citizens seeking land certificates.

Through the Phase VII Policy Package announced by Coordinating Minister for Economic Affairs Darmin Nasution at the Presidential Palace, the government shows a strong commitment to accelerate the process by providing convenience to people who want to take care of the land certificate. Thus the community will obtain certainty of land titles. To that end, the government will also increase the number of certified measuring officers, especially from non-civil servant elements.

Until today, the acceleration of land certification is still hampered due to the limited number of measuring officers which only amounted to 4,349 people. They consist of 2,159 civil servants (effectively working only 1727 people) and 2,190 Certified Measuring Officers. Whereas, the total number of plot of land in Indonesia, that is outside the forest

⁴⁰ Boedi Harsono, 2005, Indonesian Agrarian Law: History of Formation of Basic Agrarian Law, Its Execution Contents, Djambatan, Jakarta, p. 81

area is 90,663,503 fields. Of that number, certified soils amounted to only 35,789,766 (40%) while uncertified ones are 54,832,737 (60%).

This limited certified land, in turn impedes access to public financing to expand its business, particularly micro, small and medium enterprises. Therefore the government through the Ministry of Agrarian and Spatial innovation services to accelerate the process of land certification, namely: Saturday-Sunday Service (including in Car Free Day Area), night service in the area of Car Free Night Bandung and Traditional Market in Pandeglang; Opening a service outlet to get closer to the Land Service Center with Community Settlements (already started in Bandung and Semarang regencies); Implementing "On-Line Village" Services in NTB Province, Central Bangka Regency and Batam City, using internet facility/availability; Provide charge (Rp 0,-) for the owner of Prosperous Family Card issued by the Ministry of Social Affairs.

In addition, the government also accelerated the announcement period for land registration, which originally took 60 days for periodic land registration and 30 days for systematic landscaping, to 14 working days. Another service is to change the land registration from manual to electronic system, so the total time for the land certificate process to be 30 working days (1 day for the examination of the application, 10 days for checking and land measurement, 3 days for physical and juridical data processing, 14 days Announcements, and 2 days for signing and handing the land certificate).

Conclusion

The provisions of the force of the law of the certificate have been stated in Government Regulation Number 24 of 1997 concerning Land Registration that the certificate is a proof letter that serves as a powerful evidentiary means of physical data and juridical data contained therein. Here what is meant by physical data is data concerning the location, boundary, and area of the land concerned, and then referred to as juridical data such as data on the legal status of the land, landowners, and any rights that burden the land. Concerning the definition of physical data and juridical data has also been described in Article 1 number (6) and (7) of Government Regulation Number 24 of 1997 concerning Land Registration.

Land registration is held to ensure legal certainty for the owner of the land concerned, this is in accordance with the statement of Article 19 paragraph (1) of Law Number 5 of 1960 on the Basic Regulation of Agrarian Principles (hereinafter referred to as BAL) which reads:

"To ensure legal certainty by the Government there is a land registration throughout the territory of the Republic of Indonesia in accordance with the provisions stipulated by Government Regulation."

In addition to land registration functions to ensure legal certainty for landowners, land registration also functions for the government and interested parties. For the government, here the government can find out the legal status of the land concerned, whether the listed land possess a right of ownership, right to use, the right to use the building, or other rights. So here the government in taking a policy can take appropriate action against the land concerned. For interested parties such as entrepreneurs who want to build businesses on the land, or individuals who want to buy land, they are not worried or doubt about the land they will buy or

already bought because they themselves know the legal status of the land.

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