



The Effectiveness of Land Registration Laws in Realizing Agrarian Reform Based on Justice Values in Indonesia

Ragil Ibnu Hajar^{1*}, Ellydar Chaidir², Efendi Ibnuususilo³, Surizki Febrianto³

¹Law Doctoral Program, Universitas Islam Riau, Pekanbaru, Indonesia

²Professor in International Law Universitas Islam Riau, Pekanbaru, Indonesia

³Faculty of Law, Islamic University of Riau, Pekanbaru, Indonesia

| Received: 09.09.2023 | Accepted: 15.09.2023 | Published: 25.09.2023

*Corresponding author: Ragil Ibnu Hajar

Law Doctoral Program, Universitas Islam Riau, Pekanbaru, Indonesia

Abstract

Land registration is a series of activities carried out by the State/Government continuously and regularly, in the form of collecting information or specific data regarding certain lands in certain areas, processing, storing and presenting them for the benefit of the people to provide guarantees. Legal certainty in the land sector, including evidence and its maintenance. Land Registration regulations still need to be fair. Negative publicity systems (with positive elements) have encouraged centralized bureaucracy because there is no clear accountability for land certificate products in the customary land registration system due to the registration process, so the legal ideal of realizing social justice in land law policy on land registration has not been achieved.

Keywords: Regulations, Land Registration

Introduction

The Indonesian state is legal based on Pancasila and the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia). The realization of social justice, specifically regarding control and ownership of land, is regulated in Article 33, paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

To carry out land registration as intended in Article 19 UUPA, Government Regulation Number 10 of 1961 concerning Land Registration (PP Number 10 of 1961) was replaced with Government Regulation Number 24 of 1997 concerning Land Registration (PP Number 24 of 1997), based on simple principles, safe, affordable, up-to-date and open, and aims to provide legal certainty and protection of customary land rights, information, and orderly land administration. The issuance of PP Number 18 of 2021 was motivated by awareness of the increasingly important role of land in development, which increasingly requires support from legal certainty in the land sector.

Land registration is an absolute thing to do so that every land has legal force and certainty, namely in the form of a land certificate. If this is studied philosophically, juridically and sociologically, the

existence of the UUPA with a set of regulations for implementing land registration specifically aims to realize legal certainty in guaranteeing land rights throughout the territory of the Republic of Indonesia.

Even though land ownership has been regulated in such a way, there are still problems regarding ownership of a plot of land, for example, a plot of land controlled by a legal subject for many years and accompanied by a certificate. There are still outside parties claiming rights to the land. This problem often occurs in various regions in Indonesia. Therefore, the government is paying particular attention to dealing with these two problems through the Economic Equalization Policy (KPE), which will be synchronized with economic growth policies, one of which is through Agrarian Reform.

The agrarian reform program involves various parties, including the government (National Land Agency and other related agencies), the private sector and society. Meanwhile, this research aims to determine the implementation of agrarian reform in the Pelalawan Regency, which involves various other institutions and to determine the community's response to this agrarian reform.

Land law policies in the implementation options in the HAT registration system, it is suspected that there has been a deviation

or denial of the legal image. According to the KPA (Consortium for Agrarian Reform), 212 agrarian conflicts occurred throughout 2022, and land rights fighters in various regions experienced 497 criminalisation cases. In Riau province in 2022, 90 per cent of the conflicts that will occur will be land conflicts, and in 2020, Riau province will become the area with the highest conflict vulnerability, with 29 cases throughout 2020.

Research methods

The legal research method used by the author is the normative juridical method. Legal research is carried out by reviewing library materials. This type of research is literature that refers to personal data protection policies in Indonesia, which are very much needed in upholding people's fundamental rights. The approaches used in this research are the statutory and case approaches. The legal approach is carried out by reviewing the laws and all regulations related to developing legal issues.

Results and Discussion

Land Registration Regulations in Realizing Unfair Agrarian Reform

The legal basis for cadastre explains that what is meant by land registration is a series of activities carried out by the Government continuously and regularly, including the collection, processing, bookkeeping, and presentation and maintenance of physical data and juridical data in the form of maps and lists, regarding plots of land and apartment units, including the provision of letters of proof of title to plots of land to which there are already existing rights and ownership rights to apartment units and certain burdens on them.

Land registration is carried out based on simple, safe, affordable, up-to-date and open (Article 2 PP 24/1997), while in Article 3 PP 24/1997. The model of the land registration system used in Indonesia can be seen from the applicable legal provisions (PP No. 10 of 1961 jo. PP No. 24 of 1997) by indicating that the formal document of ownership of land rights following these legal provisions is in the form of a title certificate, so it can be concluded (temporarily) that the land registration system in Indonesia should be based on a registration system with a positive publicity system, which can be proven by the existence of a distinctive feature or character of the land registration system, namely the existence of a certificate as proof of ownership rights to land, with all the sequence of procedures and mechanisms regulated in the statutory regulations in the land registration system, the positive publicity steel model is more dominant. Confirmation of the negative publicity stelsel character can be seen in the jurisprudence of the Supreme Court of the Republic of Indonesia (MARI), which firmly states that our land registration adheres to the negative publicity stelsel model. One of these jurisprudence can be read in MARI Decision No. Reg. 459 K/Sip/1975, dated 18 September 1975. In obtaining legal certainty and protection, registration of land rights is also related to the land registration publication system, meaning legal certainty and legal protection as one of the objectives of land registration depends on the land registration publication system adopted by a country. As a country, Indonesia adheres to a negative land registration publication system.

Many of the problems faced in HAT pre-registration at the sub-district/village level from time to time have yet to be resolved. From an internal perspective, various factors such as democracy, decentralization and internal bureaucracy will still impact the level

of complexity of the problem and efforts to find solutions in the future. Meanwhile, from the external side, globalization factors and the information technology revolution will also strongly influence the search for policy alternatives in the field of state apparatus in general and land law policy in particular.

Internal bureaucratic problems at the sub-district/village level include 1) violations of discipline, 2) high levels of abuse of authority and irregularities, 3) low performance of human resources (sub-district/village apparatus), 4) institutional (organizational) systems and management (management) of government is inadequate, 5) low welfare of civil servants or sub-district/village employees, 6) many laws and regulations are no longer by developments in conditions and development demands (especially in the land sector, agrarian reform is needed in general and legal policies in particular land use in the option of using negative publicity systems with positive elements is no longer feasible).

Completeness and validation of land documents at the Notary-PPAT in the Customary Land registration system is the implementation of land law policies implemented by BPN. To smoothly carry out land registration duties, the government gives authority to other officials to assist BPN in implementing the task. The implementation of land registration duties is strictly determined by PP 24 of 1997, in the principles of land registration article 6 (1)... the task of implementing land registration is carried out by the Head of the Land Office, except for certain activities which are regulated by Government Regulation 24/1997 or legislation is assigned to another official. (2) In carrying out land registration, a Land Deed Drafting Officer (PPAT) assists the Head of the Land Office. The existence of officials in a constitutional order is essential because these officials are the executors of the duties and personification of the state. In a constitutional concept, the state is represented by the government, and officials also represent the government. The success of a state institution is also determined by the ability of the officials assigned to run the government. One of the duties of officials, especially government officials, is that applicable laws and regulations recognize their existence. This is a consequence of the provisions in the 1945 Constitution, which stipulates that the Republic of Indonesia is a legal state. The principle of the rule of law guarantees certainty, order and protection of laws that have truth and justice as their core. Certainty, order and legal protection require, among other things, that legal traffic in people's lives requires the existence of evidence (especially in the land sector, the creation of authentic deeds regarding specific legal actions on Customary Land) to determine a person's rights and obligations as legal subjects in society.

The Effectiveness of Land Law on Land Registration in Realizing Agrarian Reform Based on Justice Values

The government, to realize social justice towards a prosperous and prosperous society, regulates that the granting of land rights requires that every land right must have a social function (article 6 UUPA), so it is intended not to harm the public interest, so ownership and control of land that exceeds the limit is not permitted. Permitted. The government has the right and obligations to regulate land rights so that the government, in this case, represented by BPN, is obliged to carry out supervision related to determining the maximum and minimum land area limits that a family or legal entity can own.

In the context of land redistribution, the government must supervise every person and legal entity with a right to land. In implementing land registration practices, the government must implement the concept of land redistribution by considering socio-cultural values. As a form of government supervision over land use, control, ownership and utilization, location permits are applied to HAT control. A location permit is a permit given to a company to acquire land required for investment, which also applies as a permit to transfer rights and use the land for investment business purposes.

Every company that has obtained investment approval must have a Location Permit to obtain the required land. A location permit is not required and is deemed to be owned by the company if: 1) the land represents income (inbred) from shareholders, 2) the land is land that another company has controlled to continue the activities of that company, i.e. the land is part of the land in an Industrial Area, or the land comes from an authority or agency developing an area, or the land is an extension of an existing business and is located adjacent to the business concerned, provided that the area is not more than 25 Ha for agricultural businesses or not more than 1 Ha for non-agricultural businesses, and the land is already owned by the company concerned. Land designated in a Location Permit is land whose planned use is by the applicable Regional Spatial Plan. The decision letter granting a Location Permit is signed by the Regent/Mayor of the Municipality or, for provincial areas, it is given/signed by the Governor provided that after a coordination meeting is held between the relevant agencies, chaired by the Regent/Mayor of the Municipality or, by the Governor, or by an official appointed permanently by him.

The implementation of HAT within the framework of achieving social justice refers to the principles of the welfare state, as the concept of the welfare state contains elements of socialism, prioritizing welfare in the political and economic fields. It can also be said that the welfare state contains the principle of freedom (liberty), the principle of equal rights (equality), as well as the principle of friendship (fraternity) or togetherness (mutuality). The principle of friendship or togetherness can be equated with kinship or cooperation.

In implementing the BPN bureaucratic system and public services, there are many deviations from the principles in the HAT registration system, such as the importance of consistent implementation of the principles in the provisions of the HAT registration system by adding and emphasizing the importance of the principle of accuracy. Suppose the principle of accuracy can be realized in the HAT registration system. In that case, the implementation of the principle of accuracy must be synchronized with the principle of being up-to-date and open, namely, to obtain accurate results, accurate data is also needed, and accurate data will be obtained if there is always data updating. However, it is not just updating the data on the certificate that will be used as the object of the transaction, but updating the data which must be supported by the latest technology, for example, if humans are living creatures who are always on the move, they can create accurate population card data using an online system or if a vehicle as a movable object also carries out transactions every day, or hours or minutes in large enough quantities, a reasonably accurate database can be created, with fast and affordable (measurable) service, then land as a permanent object should be more accessible. Mapping data is carried out using the latest technology. BPN must be able to update

land data by Samsat for updating and correcting vehicle data. Updating land data should include accurate mapping of its use, control, ownership and utilization so that data updating should also include data collection on the area or number of HAT ownership plots of someone who already has the maximum HAT ownership.

Concerning the understanding and proposal of the principle of accuracy, we can compare it with the principle of accuracy in the State administrative legal system. Accuracy is one of the formal principles in the General Principles of Good Government. The principle of accuracy here means that every TUN Official required, when preparing a decision to be issued, must obtain knowledge of all relevant facts from all related interests, not be arbitrary, be fair, respect the rights of others, and recognize equality and obligations. Between human beings, and if necessary, also consider the interests of third parties,

The principle of due diligence requires that interested parties be heard (obligation to hear) before the sub-district head and village head are faced with the issuance of an adverse statement. According to Ateng Syafrudin, the principle of due diligence requires that interested parties be heard first by obtaining information about the existence of a party transferring land rights before they are faced with an adverse decision if the interested parties have the opportunity to explain. The elements that must be fulfilled when applying the principles of formal accuracy include, among others, that a decision must be prepared and taken carefully (carefully). The principle of material accuracy requires that no harm be caused to someone due to a hidden TUN decision. This principle of accuracy is regulated in Article 53 paragraph (2) letter c of Law Number 5 of 1986 (as amended by Law No. 9 of 2004 concerning Amendments to Law No. 5 of 1986 concerning State Administrative Courts). According to Indroharto, the scope of the principle of formal accuracy is accuracy when preparing a decision, along with the principle of fair play or an honest attitude from the agency that issued the decision, as well as the implementation of the HAT registration system. The implementation of HAT registration should have implemented a principle that can legally protect and guarantee the interests of the people who receive services for land registration. The problem that arises is not just the accuracy required in the HAT registration system, but more than that, because it concerns the issue of HAT objects which relate to many people's lives. It would be more precise if implementing the land rights registration system and there is a principle of accuracy.

The mission of the land registration system, regarding legal certainty and protection, will be achieved more concretely if the principle of accuracy can be implemented. In line with the mission of the HAT registration system, it is related to the purpose of land registration as regulated in Article 3 PP Number 24 of 1997

Regarding transferring HAT from land/buildings to heritage/inheritance, there is no protection or clear regulations for minors/immature children. There are no clear rules at sub-district and sub-district offices regarding ratification of letters for differences between the name written on the KTP and the name written on the certificate by the parties, including inaccurate issuance of widow/widower certificates and inheritance certificates). Sub-district and sub-district offices are still very thick with symbols of power (elitist). In services relating to land documents, they favour entrepreneurs or specific people (respected people/elites), so administrative order is sometimes neglected due

to circumstances. Unequal conditions between the elite and people experiencing poverty often need more orderly administration. Orderly administration in the pre-registration of land at the sub-district level is not supported by bureaucratic standardization at the sub-district level. Apart from the state and condition of the sub-district office, which does not meet bureaucratic standards, the condition of human resources at the sub-district level is also not as expected. The behaviour of sub-district officials tends to ignore orderliness. Administration is also one of the causes of this disorder.

Conclusion

Regulations on Acknowledgment of Land Rights in Land Registration still must be fair. The negative publicity system (with positive elements) has encouraged a centralized bureaucracy because, in the land registration system, there is no clear accountability for land certificate products due to the registration implementation. This lack of responsibility has fostered a BPN bureaucratic culture trapped in developing a vertical culture rather than a horizontal one (a culture more oriented towards the public interest). The centralization of the BPN bureaucracy has led to the proliferation of pathology in the form of various acts of abuse of power, which has led to deviations from the principles of the land registration system. BPN's bureaucratic pathology arises because the norms and values that act as a reference for action in the land registration bureaucratic system at BPN are more oriented towards power and political interests rather than public service. This is all because land law policies are always determined by the centre, which shows the solid centralized bureaucracy culture in Indonesia's land registration system. Land law policies in the negative publicity system (with positive elements) in the land registration system have yet to demonstrate good service in Indonesia's bureaucratic and public land services. So, the legal ideals of realizing social justice in land law policies on land registration still need to be added to the values of justice.

Reference:

1. Apriani desi & Bur arifin, "*Kepastian Hukum Dan Perlindungan Hukum Dalam Sistem Publikasi Pendaftaran Tanah Di Indonesia*", Jurnal Bina Mulia Hukum Volume 5, Nomor 2, Maret 2021, P-ISSN: 2528-7273, E-ISSN: 2540-9034.
2. Muhammad Zainuddin, *Pemahaman Metode Penelitian Hukum*, Istana Agency, Yogyakarta, 2019, p 62.
3. S.F. Marbun, *Peradilan TUN*, Cetakan Kedua, Liberty, Yogyakarta, 2003, hlm. 148
4. Indroharto, *Usaha Memahami Undang-Undang tentang Peradilan Tata Usaha Negara, Buku II Beracara di Pengadilan Tata Usaha Negara*, Cetakan Kelima, Pustaka Sinar Harapan, Jakarta, 1994, hlm. 179
5. Philipus M. Hadjon, R. Sri Soemantri Martosoeiwignjo, Sachran Basah, Bagir:Manan, H.M. Laica Marzuki, J.B.J.M. Ten Berge, P.J.J. van Buuren, F.A.M. Stroink, *Pengantar Hukum Administrasi Indonesia (Introduction to the Indonesia Administrative Law)* Cetakan Kedelapan, Gajah Mada University Press, Yogyakarta, 2002, hlm. 274.
6. Paulus Effendie Lotulung dalam Jazim Hamidi. *Penerapan Asas-Asas Umum Pemerintahan yang layak (AAUPL) di Lingkungan Peradilan Administrasi Indonesia (Upaya Menuju "Clean and Stable*

Government), Cetakan Kesatu, Citra Aditya Bakti, Bandung, 1999, hlm. 144

7. Pasal 1 Peraturan Pemerintah Nomor 24 Tahun 1997 tentang pendaftaran tanah

