



Volume 38 No. 2, December

P-ISSN: 1412-2723

Legal Certainty of Measurement And Mapping Of Land Basic Maps

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ARTICLE INFO

Keywords:

Certainty; Land;
Measurement.

DOI :

10.26532/jh.v38i2.23655

ABSTRACT

The purpose of writing this research is to find out and analyze the implementation of the measurement and mapping of the land base map so that it can be legal certainty and beneficial for the people and the country, this research uses the normative juridical approach method. The results of the research indicate that the implementation of the measurement and mapping of the land base map is a legal certainty and provides another benefit of the certificate of right to the land is that it can provide a sense of security and peace for the owner, everything is easy to know and its nature is certain and can be held legally accountable. The implementation of the measurement and mapping of the land base map is a legal certainty and provides another benefit of the certificate of right to the land is that it can provide a sense of security and peace for the owner, everything is easy to know and its nature is certain and can be held legally accountable.

1. Introduction

The country of Indonesia as a country that asserts itself as an "agrarian country" places land in a very important position. Land is so important that the constitution mandates the state to protect it. This is explicitly stated in Article 33 paragraph (3) of the State Law of the Republic of Indonesia Year 1945 which affirms that *"Bumi, air dan kekayaan yang terkandung di dalamnya dikuasai oleh negara untuk sebesar-besar kemakmuran rakyat."*¹ As a follow-up to Article 33 of the 1945 Constitution, the founders of this country, located in the capital of the country which at that time was still located in Yogyakarta, immediately formed a special committee to design and propose the land law in Indonesia and their hope that the legal framework would be completed quickly and quickly used. But the reality is reversed because of the legal umbrella known as Law No. 5 of 1960 on Agrarian Basics or known as UUPA which came into effect in September 1960.²

The purpose of the Agrarian Law is in line with the purpose of the 1945 Constitution of the Republic of Indonesia as the legal basis for the formation of

1 Anna Triningsih dan Zaka Firma Aditya, Pembaharuan Penguasaan Hak Atas Tanah Dalam Perspektif Konstitusi, *Jurnal RechtsVinding*, Vol.8 No.3, Desember 2019, page.329–349

2 Elza Syarief, *Menuntaskan Sengketa Tanah*, Gramedia, Jakarta, 2014, page.2

the UUPA, which is to "protect the entire Indonesian nation, promote public welfare, enlighten the life of the nation, and participate in the implementation of world order based on independence, eternal peace and social justice. In order to achieve the country's goals as mentioned above, in the field of agriculture, it is necessary to establish a unified agrarian law that applies to all Indonesian people, simplify agrarian law, and eliminate the nature of dualism, as well as provide legal certainty of what is the right of all Indonesian people.³ The provision of certainty of the land law in it contains the certainty of the boundary of the land area which is commonly known as the boundary map of the area.⁴ In the Regulation of the Minister of Agrarian and Spatial Planning/ Head of the National Land Agency of the Republic of Indonesia Number 21 of 2019 Regarding the Basic Land Map.

Land is a resource that can be used by humans to carry out various life activities. The supply of land/space on the surface of the earth is very limited, while the human need for new land/space continues to increase. The limitation of the land can cause conflicts of interest or disputes over land. The wide range of problems and the boundaries of land also often cause conflicts.⁵

Land registration is conducted by keeping in mind the state and society, social and economic traffic needs and the possibility of each piece of land in the eyes of agrarian law, the status of rights and rights holders must be clear. The right to land that contains aspects of legal certainty and justice is inseparable from the use and utilization of land that creates prosperity. Certainty and justice alone, cannot create prosperity without use and utilization. On the contrary, the use and utilization alone without certainty and justice cannot provide fair and certain prosperity which is the ideal of independence

Article 1 paragraph (1) of Presidential Decree Number 32 of 1979 on Principles of Policy in the Framework of Granting New Rights to Land Originating from the Conversion of Western Rights, it is stated that the land of Business Use Rights, Building Use Rights and Usufructuary Rights from the conversion of western rights, the term will expire no later than September 24, 1980 as referred to in the UUPA, and at the time of the expiration of the rights concerned will become land controlled directly by the State. The right to customary land that obeys the law of a custom has made a special stipulation, namely in a Decree of the Minister of the Interior Number 26 DDA/1970, where the change of tenure rights has no conversion limit caused by considerations to focus on costs, design procedures, and ignorance of the community to legalize their land.⁶

The terms "controlled" or "controlled with the intention of use" or "organized

3 Indah sari, Hak-Hak Atas Tanah Dalam Sistem Hukum Pertanahan Di Indonesia Menurut Undang-Undang Pokok Agraria (UUPA), *Jurnal Mitra Manajemen*, Vol.9 No.1, 2017, page.15-33

4 General explanation of Law Number 5 of 1960 concerning Basic Agrarian Regulations

5 Naufal Ilyas Abdul Hakim, L M Sabri, Abdi Sukmono, Kajian Akurasi Citra Satelit Worldview 4 Pada Pembuatan Peta Dasar Pendaftaran Tanah, *Jurnal Geodesi UNDIP*, Vol.8 No.1,2019, page.308-307

6 Muhammad Ilham Saputra dan Sri Wildan Ainun Mardiah, Kedudukan Hukum tanah Adat dalam Pengembangan Administrasi Pertanahan di Indonesia: Studi Komparatif, *Jurnal Amanna Gappa*, Vol.27 No.2 September 2019, page.76

with juridical intent" have different meanings and have different legal consequences. The meaning of "possessed" is not the same as the meaning of "owned". If it is stated that the land is controlled or mastered in the sense of "possession", then juridically it means that the land is physically controlled by someone who in the factual sense is a worker or tiller, but it cannot be confirmed that juridically he is the owner. Land owners generally have proof of rights to the land, with clear evidence that they physically occupy or control the land.⁷ Likewise, when it is mentioned that the land is owned or owned in the sense of "Ownership" it means that the land is owned, but it does not mean that the land can be controlled physically due to the existence of a certain contractual relationship and cooperation.⁸

In order to guarantee legal certainty for the holder of the right to land, according to the law "certificate" is a powerful tool of proof so that the owner is given legal certainty and legal protection. With that certificate, the holder of the right to the land will be guaranteed its existence.⁹ Talking about the registration of land rights in order to obtain legal certainty and protection, it is also related to the land registration publication system. This means that legal certainty and legal protection as one of the purposes of land registration depends on the land registration publication system adopted by a country. Indonesia as a country adheres to the negative land registration publication system. The negative registration system means that the government does not guarantee the correctness of the data presented in the land certificate and book.¹⁰

The purpose of writing this research is to find out and analyze the implementation of land base map measurement and mapping based on the regulations of the Minister of Agriculture and spatial planning of the head of the national land agency of the Republic of Indonesia number 21 of 2019 regarding the Land Base Map so that it can be a legal certainty and beneficial for the people and the country

2. Research Methods

The approach method used for the completion of this research is normative juridical, In the context of the problems discussed in this study, the constructivism paradigm is used as a thinking paradigm to reconstruct the policy of preventing and handling terrorism so that it has the value of justice. Changes in the legal policy against terrorism are carried out to improve policies that have not been effective and there are many obstacles in their implementation

7 Farida Patittingi, Penegasan Alas Hak Penguasaan Fisik Turun-temurun Dalam Praktik Pendaftaran Tanah, *Amanna Gappa*, Vol.19 No.4, 2011, page. 355-356

8 Maria Farida Naibaho, Pengakuan Penguasaan dan Pendudukan Tanpa Alas Hak Kepemilikan Yang Berakibat Sengketa; Studi Kasus Putusan MA No. 2511/K/PDT/1995 Tanggal 09 September 1997, *Jurnal Universitas Sumatera Utara*, Vol.VIII, Tahun 2015, page.5-6

9 Harris Yonatan Parmahan Sibuea, Arti Penting Pendaftaran Tanah Untuk Pertama kali, *Jurnal Negara Hukum*, Vol.2 No.2, 2011, page. 289.

10 Desi Apriana, Arifin Bur, Kepastian Hukum dan Perlindungan Hukum Dalam Sistem Publikasi Pendaftaran Tanah Di Indonesia, *Jurnal Bina Mulia Hukum*, Vol.5 No.2, Maret 2021, page.220-239

3. Result and Discussion

3.1 Legal Certainty of The Implementation of Land Registration

Land registration is a requirement in efforts to organize and regulate the allocation, control, ownership and use of land including to overcome various land problems. Land registration is intended to provide certainty of rights and legal protection for holders of rights to land by proving the land certificate, as an instrument for the arrangement of land ownership and ownership as well as a controlling instrument in the use and utilization of land. Registration of land rights is a guarantee from the state, and is an important instrument for the protection of land owners. Land registration is *rehtkadaster* which includes the activities of land measurement, mapping, and bookkeeping, registration of these rights, granting of land rights certificates that are valid as a powerful evidence tool.

The implementation of land registration includes the activities of land registration for the first time (initial registration) and maintenance of land registration data (maintenance) (Article 11, PP 24/1997). Land registration for the first time is carried out through systematic land registration and sporadic land registration. Systematic land registration is a land registration activity for the first time that is carried out simultaneously which includes all land registration objects that have not been registered in the area or part of the area of a village/township. Sporadic land registration is a land registration activity for the first time regarding one or more objects of land registration in the area or part of the area of a village/kelurahan individually or *en masse*. Systematic land registration is prioritized, because through this method, the acquisition of data on the areas of land to be registered will be accelerated rather than through sporadic land registration. In addition to systematic land registration, sporadic land registration will also be improved in its implementation, because in reality there will be more requests to register individually and the *missal* required in the implementation of development, which will further increase its activities. Land registration data maintenance is a land registration activity to adjust the physical data and juridical data in the registration map, land register, name list, survey letter, land book and certificate with the changes that occur later. In order for the data available at the land office to always be in accordance with the latest situation, in article 36 paragraph (2) of PP 24/1997 it is determined that the concerned rights holders must register the intended changes to the land office. The land registration system used by a country depends on the legal principles that the country adheres to in transferring rights to its land. There are two types of legal principles, namely the principle of good faith and the principle of *nemo plus juris*. The principle of good faith reads "a person who acquires a right in good faith, but becomes a legal right holder according to the law". This principle aims to protect people in good faith. The principle of *nemo plus juris* reads "a person cannot transfer rights beyond the rights he has". This means that the transfer of rights by unauthorized persons is null and void. This principle aims to protect the actual rights holder.¹¹

11 Adrian Sutedi, 2014, *Sertifikat Hak Atas Tanah*, Cetakan 3, Sinar Grafika, Jakarta, page.59.

Based on Article 11 of Government Regulation Number 24 of 1997, there are two land registration activities, namely land registration for the first time and maintenance of land registration data.

3.1.1 Systematic land registration

Systematic land registration is a land registration activity for the first time that is carried out simultaneously, which includes all land registration objects that have not been registered in the area or part of the area of a village/township. According to Article 1 number 10 of Government Regulation Number 24 of 1997: "Systematic land registration is a land registration activity for the first time that is carried out simultaneously which includes all objects of land registration that have not been registered in the area or part of the area of a village/village."

Systematic land registration is a land registration activity for the first time that is carried out simultaneously that includes all land registration objects that have not been registered in the region or part of the region of a village or kelurahan and this registration is a government initiative.¹²

Systematic land registration is land registration carried out on the initiative of the National Land Agency based on a long-term work plan and a continuous annual plan that is implemented in areas designated by the minister. Systematic land registration, the initiative comes from the local land office. Those who visited the location, went to the land owners accompanied by the village officials who were included in the adjudication committee. The cost of land registration like this is charged by APBN and loan funds from the World Bank and is commonly called "adjudication project.

Systematic land registration stages procedures, among others:

- 3.1.1.1 Determination of the location by the minister on the proposal of the head of the land office.
- 3.1.1.2 Preparation of the head of the land office to prepare a basic registration map in the form of a line map or a photo map.
- 3.1.1.3 Establishment of adjudication committee and task unit.
- 3.1.1.4 Completion of the existing application at the time of registration in a systematic manner.
- 3.1.1.5 Regional counseling.
- 3.1.1.6 Collection of physical data.
- 3.1.1.7 Collection and research of juridical data.
- 3.1.1.8 Announcement of physical data and juridical data and their confirmation.
- 3.1.1.9 Affirmation of conversion and acknowledgment of rights.

12 Boedi Harsono, 2008, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-. Undang Pokok Agraria, Isi Dan Pelaksanaannya*, Djambatan, Jakarta, page.334

3.1.1.10 Registration of rights.

3.1.1.11 Arrangement of certificates

3.1.1.12 Submission of Activity Results

The Legal Basis of Systematic Land Registration in the implementation of land registration activities is regulated in Government Regulation Number 10 of 1961 and has lasted for 35 years until 1997 and then replaced by Government Regulation Number 24 of 1997. This systematic land registration process was initially regulated through the Regulation of the Minister of State for Agraria /Head of BPN (PMA/KBPN) No. 1 year 1995, which was revoked with PMA/KBPN No. 3 of 1997 regarding the Implementation of Government Regulation Number 24 of 1997.

3.1.2 Land Registration is Sporadic

Sporadic land registration is a land registration activity for the first time regarding one or more objects of land registration in a region or part of a village/kelurahan individually or en masse. Definition of Sporadic Land Registration based on Government Regulation Number 24 of 1997 Article 1 number 11 is the activity of land registration for the first time regarding one or several objects of land registration in the area or part of the area of a village/village individually or en masse, which means that all costs are charged to petitioner.¹³

In the sporadic registration process, the applicant will be asked to fill out and sign a special certificate application form while submitting the required documents or completeness and paying a certain amount of fees that are listed in the Tariff list. Everything takes place in front of a special counter in the land office building. Sporadic registration can also be done en masse, that is, several owners whose land is adjacent to each other simultaneously apply for certification to a special counter at the land office. This method is usually called mass sporadic land registration.

Sporadic land registration based on Government Regulation Number 24 of 1997:

3.1.3 Submitted individually or en masse by interested parties listed in Article 13 paragraph (4).

3.1.4 Creation of the basic registration map listed in Article 15 and Article 16.

3.1.5 Determining the boundaries of the land areas listed in Article 17 and Article 19.

3.1.6 Measurement and mapping of land area and creation of registration map listed in Article 20.

3.1.7 Creation of the land list listed in Article 21

13 Bambang Eko Muljono, Pendaftaran Tanah Pertama Kali Secara Sporadik Melalui Pengakuan Hak, *Jurnal Independent*, Vol.4 No.1, 2016, page.20-27

- 3.1.8 The making of measurement documents is listed in Article 22.
- 3.1.9 Evidence of new rights listed in Article 23.
- 3.1.10 Proof of old rights listed in Article 24 and Article 25.
- 3.1.11 Announcement of juridical research results and measurement results listed in Article 26 and Article 27.
- 3.1.12 Confirmation of the results of the announcement listed in Article 28.
- 3.1.13 Proof of rights listed in Article 29 and Article 30.
- 3.1.14 Issuance of certificates listed in Article 31

The Legal Basis of Sporadic Land Registration in land registration for the first time is a land registration activity carried out against land registration objects that have not yet been registered based on Government Regulation Number 24 of 1997 on Land Registration. Government Regulation Number 24 of 1997 clearly states that the government agency that organizes land registration throughout the Republic of Indonesia according to Article 5, namely the National Land Agency (BPN), then in Article 6 paragraph (1) it is confirmed that in the framework of organizing the land registration, the task of implementation done by the Head of the Regency/City Land Office.

Sporadic Land Registration Procedure according to the Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 3 of 1997:

- 3.1.15 Application for land surveying.
- 3.1.16 Measurements are listed in Article 77 and Article 81.
- 3.1.17 The collection and research of juridical data in the field of land is listed in Article 82 and Article 85.
- 3.1.18 The announcement of physical data and juridical data for 60 days is listed in Article 86 and Article 87.
- 3.1.19 Affirmation of conversion and recognition of rights listed in Article 88.
- 3.1.20 Registration of rights is listed in Article 89 and Article 90.
- 3.1.21 Issuance of Certificates is listed in Article 91 and 93.

3.2 Legal Certainty of Measurement and Mapping of Land Basic Maps

Land Registration activities require a guarantee of legal certainty. One of the important issues related to the certainty of the law is the principle of publicity which has different arrangements between government regulations and ministerial regulations. In order to fulfill the principle of publicity in the proof of land ownership, the announcement of physical data and juridical data is carried out for 14 (fourteen) calendar days (Article 24 Regulation of ATR/Ka.BPN Number 6 of 2018) as follows:

- 3.2.1 Recapitulation of the juridical data that has been included in the juridical data research report on the land areas that have been mapped in the land area map, included in the list of juridical data and physical data of the land area.
- 3.2.2 In order to fulfill the principle of publicity in the proof of land ownership, juridical data and physical data of the land area and map of the land area are announced using the physical data and juridical data announcement form for 14 (fourteen) calendar days in the office of the adjudication committee of the Complete Systematic Land Registration and the office village head.
- 3.2.3 Interested parties are given the opportunity to submit objections regarding the announcement of physical data and juridical data as referred to in paragraph (2) during the announcement period.
- 3.2.4 After the announcement period as referred to in paragraph (2) ends, the physical data and juridical data are confirmed by the adjudication committee of the Complete Systematic Land Registration which is made in the form of a report of the confirmation of the announcement of physical data and juridical data.
- 3.2.5 The list of juridical data and physical data of land is made in accordance with the format as listed in appendix vii which is an integral part of this ministerial regulation.
- 3.2.6 If at the time of confirmation of physical data and juridical data as referred to in paragraph (4) there are still incomplete data or there are still objections that have not been resolved, then the physical data and juridical data will still be confirmed by giving a note in the minutes of the confirmation of physical data and juridical data regarding matters that have not been completed and/or objections that have not been resolved.
- 3.2.7 In the event that there is a party who submits an objection as referred to in paragraph (3), a written notification is submitted to immediately submit a lawsuit to the Court.
- 3.2.8 Objections as referred to in paragraph (6) are recorded in the list of objections/ objections to the announcement of the results of physical data research and juridical data
- 3.2.9 Objection handling is carried out in accordance with the provisions of laws and regulations.

This provision is different from Article 26 of Government Regulation Number 24 of 1997 regarding Land Registration which requires 30 days and Article 63 PMNA/ Ka. BPN No. 3 of 1997 regarding the Implementation Provisions of Government Regulation No. 24 of 1997 regarding Land Registration. The regulation of different publicity principles gives room for potential disputes in the future, because in principle, lower regulations cannot conflict with higher regulations. Based on the level theory of legal norms proposed by Hans Kelsen, that is *stufentheorie*, which states that legal norms are tiered and layered in a hierarchy, where a lower norm applies, sourced and based on a higher norm, a

norm that higher applies, sourced and based on a higher norm, so on until a norm called the basic norm (grundnorm).

Regulation of the Minister of State for Agraria/Head of the National Land Agency Number 3 of 1997 (PMNA/KBPN 3/1997) article 142 paragraph 1 mentions that the Registration Map is made by mapping the results of land area measurements on the registration base map. While in the same regulation, article 12 paragraph 1 states that the measurement and mapping for the creation of the Registration Base Map is carried out by terrestrial, photogrammetric or other methods.¹⁴

Government Regulation Number 24 of 1997 Regarding Land Registration which replaces the previous regulation. Legal certainty of land ownership data will be achieved when Land Registration has been done. Because the purpose of land registration is to provide a guarantee of legal certainty and legal protection to the holder of the right to land. Both the certainty about the subject (that is, what is the right, who is the owner, there is/is no burden on it) and the certainty about the object, namely its location, boundaries and area, as well as whether or not there are buildings/plants on it. Government Regulation Number 24 of 1997 maintains the objectives and system used in Article 19 of the UUPA and PP Number 10 of 1961.

Government Regulation Number 24 of 1997 is a refinement of the previous regulation so that there are many additions, this can be seen from the number of more articles and the content of the Government Regulation which provides more guarantees of legal certainty in terms of land ownership. According to Government Regulation Number 24 of 1997, it is confirmed that the purpose of land registration is to provide legal certainty and legal protection to the holder of the right to land; to provide information to interested parties including the government, in order to easily obtain data about a piece of land if needed.¹⁵

So it means that the issued land certificate is not an evidence that cannot be challenged, it means that the certificate can be revoked and cancelled. According to PP Explanation No. 24 of 1997 on Land Registration, in order to provide legal certainty to the holders of rights to land in this Government Regulation, confirmation is given regarding the extent of the proof of the certificate, which is declared as a powerful proof tool by UUPA. The reality of life in the midst of the community is the fact that there are still many land disputes that originate from the lack of legal certainty in the field of land such as there are still disputes/matters in the field of land as a result of either not having registered the rights to land or after the registration of rights to land, in the sense that after the land it's certified.

The Certificate of Right to land is the final result of the land registration process containing physical data (information about the location, boundaries, area of

14 Putri Ayunita, Muhammad Taufik, Dadat Dariatna, Kajian Pembuatan Peta Dasar Pendaftaran Dengan Citra Satelit Quickbird (Studi Kasus Kantor Pertanahan Kab. Jember), *GEOID*, Vol.4 No.2, Februari 2009, page.121-124

15 Mikha Ch. Kaunang, Proses Pelaksanaan Pendaftaran Tanah Menurut Peraturan Pemerintah Nomor. 24 Tahun 1997, *Lex Crimen* Vol.V No.4, April-June 2016, page.68-75

the land, as well as parts of buildings or buildings on it if deemed necessary and juridical data (information about the status of the registered land and buildings, the holder of the right to land and the rights of other parties, as well as the burdens on it). certificate has more value. Because compared to written evidence, certificate is a strong proof of rights, meaning it must be considered true until proven otherwise in court with other evidence.

The implementation of the measurement and mapping of the land base map is a legal certainty and provides another benefit of the certificate of right to the land is that it can provide a sense of security and peace for the owner, everything is easy to know and its nature is certain and can be held legally accountable. The Certificate of Right to land is the final result of the land registration process containing physical data (information about the location, boundaries, area of the land, as well as parts of buildings or buildings on it if deemed necessary and juridical data (information about the status of the registered land and buildings, holder of rights to land and the rights of other parties, as well as the burdens on them).¹⁶

4. Conclusion

The implementation of the measurement and mapping of the land base map is a legal certainty and provides another benefit of a land rights certificate is that it can provide a sense of security and peace for the owner, everything is easy to know and is certain and can be legally held accountable, so it is expected that with the transparency of action and data in the implementation can be considered as an effort to prove the actions carried out based on procedures that are in accordance with laws and regulations and do not injure responsibilities in future work in the field.

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