



THE 3rd INTERNATIONAL CONFERENCE AND CALL FOR PAPER

"Legal Development in Various Countries"



IMAM AS SYAFEI BUILDING
 Faculty of Law, Sultan Agung Islamic University
 Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

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“LEGAL DEVELOPMENT IN VARIOUS COUNTRIES”

This conference tries to reviews different theories of legal development in order to highlight their similarities and differences. And focusing on the development of law in both developed and developing countries and its role in shaping a good future.

KEYNOTE SPEAKER:
Prof. Henning Glaser
Thammasat University, Thailand

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Indonesia, September 05th 2017

Organized by : Faculty of Law Sultan Agung Islamic University (UNISSULA) Semarang-Indonesia

WORLD ISLAMIC UNIVERSITY
UNISSULA
SULTAN AGUNG ISLAMIC UNIVERSITY

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Sultan Agung Islamic University, Indonesia

5 September 2017

Organized by : Faculty of Law UNISSULA Semarang-Indonesia

FACULTY OF LAW
Sultan Agung Islamic University

This Conference And Call Paper was held by the Faculty of Law, Sultan Agung Islamic University (UNISSULA) Semarang, on:

Day: Tuesday

Date : September 5th 2017

Time : 08:00 - 15:00 pm

Place : Imam AsSyafei Building 3rd Floor

Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia

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AND CALL FOR PAPER
“LEGAL DEVELOPMENT IN VARIOUS COUNTRIES”**

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PREFACE

Assalamu'alaikum, Wr. Wb

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: **Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegnan, Ph.D from Sorbone University, Prof. Dr. I Gusti Ayu Ketut Rachmi Handayani, MM from SebelasMaret University, Dr. Zaharudin from Universiti Utara Malaysia, and Dr. Anis Mashdurohatun, S.H., M.Hum from Sultan Agung Islamic University.**

This is our third International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner to be discussed as guidelines to exchange and discuss views on the most important recent on Legal Development happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

See you in our fourth International and call for paper next year.

Wassalamualaikum, Wr. Wb

Semarang, September 5th 2017

Chairman of the Committee,



Dr. Anis Mashdurohatun, S.H., M.Hum
NIDN : 06-02105-7002

GREETING FROM THE DEAN OF FACULTY OF LAW

As-salamu'alaikum Wr. Wb.

Thank to Allah SWT is an absolute act that we must say after conducting the International Conference and Call for Paper by theme: “**Legal Development in Various Countries**” which is held by Faculty of Law, Sultan Agung Islamic University (UNISSULA) Semarang, on September 5th 2017.

This conference tries to reviews different theories of legal development in order to highlight their similarities and differences. In the end, as in contract theories, no monist view of legal development possesses the explanatory power needed to understand how law has come to be and where it may take us in the future. What we do have is a foundation built on at least two millennia of legal history. The intellectual starting point for this project is Nathan Isaacs' unfinished work on a cycle theory of legal development. His view of legal development takes issue with Henry Sumner Maine's thesis that development in advanced legal systems is progressive in nature. And, more importantly for the current undertaking, that this progression is linear in nature. Instead, Isaacs' review of thousands of years of Jewish legal development indicated that legal development perpetually progressed in cycles.

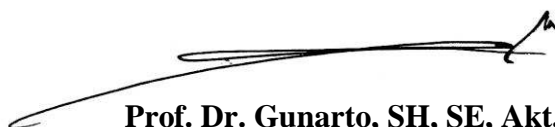
Therefore, to discuss more about legal development or law reform, Faculty of Law, Sultan Agung Islamic University is confidence to conduct a conference by the theme “**Legal Development in Various Countries**” focusing on the development of law in both developed and developing countries and its role in shaping a good future.

Finally, we thank to the presenters, article senders, and comittee who have contributed in this event, so that this international seminar ran well.

Wassalamu'alaikum Wr. Wb.

Semarang, September 5th 2017

Dean,



Prof. Dr. Gunarto, SH, SE, Akt, M.Hum
NIDN.062004670

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PRINCIPLES OF FAIR LAND REGISTRATION (STUDY OF PUBLIC SERVICE OF LAND REGISTRATION IN INDONESIA)

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ABSTRACT

In a fair land management, a special agency was created which deals with land affairs issues, namely the National Land Agency of the Republic (BPN RI). Now, BPN is the central in the management of everything related to agrarian field or land. One of the important aspects is the land registration. The article Regulation of the Government of the Republic of Indonesia Number 24 of 1997 concerning land registration, the purpose of land registration is to provide legal certainty and legal protection to the right holder as the owner of plot of land, apartment units and other registered, so that it can easily prove himself as the right holder. With this registration, the people can know how the principle of public service of land registration in Indonesia and how the obstacles occur in the implementation of land registration service policy. Finally, it will aim to find out how the reconstruction of public services of land registration is based on the value of justice in Indonesia. The method used was socio-legal method, it was used to find out the abstract concept of law and the analysis of the social environment. Starting at the shortlist, this research is descriptive-analytical research. Technique of data collection was done to get accurate and objective data. This research used primary and secondary data. In this research the analysis technique used qualitative analysis. The obstacles in the public service of land registration are very complicated problem, it can be seen from three aspects, culture, structure, and substation. Therefore, the aspect needs to be reconstructed, in order to have an impacting force in the national legal system. Therefore, some legal rules have to be changed, as well as conducting recruitment to get a reliable enforcer, as well as internalizing the values of justice.

Keywords: Land Registration, Justice, Public Policy

A. Introduction

Land is a part that can not be separated in human life. It began in the Stone Age until the era of globalization today. Theological and economic value of the philosophy makes the land so important. Starting from just a place to live, the court until the entire reception of the whole custom event requires a static object called land. How complex the value of land makes most people willing to give their lives for property rights on land.¹

¹ Bernard Limbong, *Hukum Agraria Nasional: Himpunan Peraturan-peraturan Hukum Tanah*, (Jakarta : Margaretha Pustaka, 2013) page 1

Land is a very important aspect, it needs to be managed properly in accordance with justice. This is to maintain and protect the land as part of the community. In order to ensure the implementation of national land management and to create a fair management, a special body is formed which dealt with the land issue, namely the National Land Agency of the Republic (BPN RI). Now, BPN is the central in the management of agrarian field or land.

Land is one of the very basic asset of the State of Indonesia, because the State and the nation live and thrive on the ground. The Indonesian people positioned land on a very important level, as it is a major factor in increasing productivity. In foreign terminology the soil is called land, soil (English), adama (Semit) and in leumah (Sunda); petak, Bumi (Dayak); rai (Tetum). The difference of the terms occur not only because of the difference of language, but also difference of meaning of the land by human that master or use the language. Some regional terminologies called land as siti, bhumi, lemah (Java); palemah (Bali); taneuh. The different terms occurs not only because of the differences in language, but also differences in meaning of land by humans who master or use it.

Article 3 of Government Regulation Number 24 of 1997 concerning land registration, the purpose of land registration is:

- a. To provide legal certainty and legal protection to the holder of the right to a plot of land, apartment units and other registered land, so as to easily prove himself/herself as the land holder
- b. To provide information to the interested parties, including the government, to easily obtain the necessary data in establishing legal acts concerning the listed land and apartment units.
- c. For the implementation of the land orderly administration.

The implementation of land registration allows people to easily know the law status of the land. So they will know the width and the boundaries of the land, who is the owner and what burdens are thereon.²

The realization of land registration, as intended in Article 19 of the UUPA, was originally issued by Government Regulation No. 10 of 1961 and then amended by stipulation and enactment of Government Regulation No. 24/1997 concerning Land Registry replacing

²Eddy Ruchiyat, Sistem Pendaftaran Tanah Sebelum dan Sesudah Berlakunya UUPA, (Bandung : Armicho, 1989). page.37.

Government Regulation No. 10/1961, Government Regulation No. 24/1997 got complete regulation and detailed in the Regulation of the Minister of Agrarian Affairs or the Head of the National Land Agency Number 3 of 1997 as a condition of its implementation.³

The public is increasingly aware of the importance of certificate ownership. The legitimate proof of ownership can provide legality to the owner of the land, so that they get legal certainty and protection, especially for landowners. The practice of land ownership (individual) will sell part of the land, because the community can not register the land directly. There are stages of the process that must be done first, namely the process of dividing. In Article 48 paragraph (1) Government Regulation No. 24 of 1997 states that a plot of land that has been registered can be split perfectly into several sections, each of which is a new unit with the same legal status as the original plot of the land.

Along with its development, land issues remain a problem with high numbers and complex cases. The high land dispute in Indonesia shows the increasingly important role of the National Land Agency (BPN) and the Land Office. Based on BPN records, in 2013 there were 4223 cases⁴. The high number at least indicates two things: first the land issue is a sensitive issue because it involves the intention of the second person. The high number of cases also indicates the central role of the state institution in performing its main task and function. Hendarman Supandji even said that the high number of disputes is not only due to ownership conflicts, but also the result of the lack of professional human resources at BPN⁵. Through this statement, the service of BPN and the Land Office in its main duty and function of public service in the field of land shows its urgency.

The eradication of illegal charges (Pungli) is one of the most serious aspects of the effort taken by President Joko Widodo's administration. In a coordination meeting with governors from all over Indonesia at the State Palace, Thursday, October 20, 2016, the President discussed the concrete steps to eradicate illegal charges in all levels of community services. The land agency as a state public service agency should also and be able to release this problem.

³M. Yahya Harahap, *Kedudukan, Kewenangan dan Acara Hukum Agraria*, (Jakarta : Sinar Grafika, 2003), page. 82.

⁴<http://www.bpn.go.id/Program-Prioritas/Penanganan-Kasus-Pertanahan> Accessed on 26 January 2017

⁵<http://www.republika.co.id/berita/nasional/umum/13/09/24/mtn2zv-hendarman-keluhkan-kasus-sengketa-tanah-cenderung-dipiara> Accessed on 26 January 2017

Public Service, undeniably, is one of the vital aspects of today's modern state. The modern state encourages the fullness of good governance principles which become the reference of the state administration. This is the background why the government released the Law Number 25 of 2009 on Public Service as well as Law Number 37 of 2008 on the Ombudsman As the institution that oversees the public service organized by various state public service agencies. Based on Article 1 of Law Number 25 of 2009, BPN is a state institution of public service providers that are bound by obligations as stipulated in Law.

This research wanted to know how the implementation of public service policy of land registration in Indonesia. Thus, there will be a thorough review of the land registration process. With these results, it is hoped that the authors can find out the solution of the land registration problems in Indonesia.

B. Literature Review

1. Land Registration

Registration is derived from the word "Cadastral" in Dutch is a technical term for an expression of the extent, value and ownership (or other rights) to a plot of land. The word "Cadastral" is derived from the Latin "Capitastrum" which means a register or capita or unit made for the Roman land tax (CapotatioTerrents).⁶

Land registration determines the legal relationship between a person and the land as a fixed object. Legal relationship between a person with the land as a permanent object is included in the law of land and not part of the agrarian law. This can be inferred from the definition of Land Law according to Herman Soesangobeng namely:⁷

It is a set of rules governing the synergy of the various branches of law and the legal position of the civil rights of the people to the land as a permanent object, which is controlled to be owned or utilized and enjoyed by human beings, either individually or in the form of coexistence of life together.

Land is a part that cannot be separated in human life. It began in the Stone Age until the era of globalization today. Theological and economic value of the philosophy makes the land so important. Starting from just a place to live, the court until the entire reception of the

⁶A.P. Parlindungan, Pendaftaran Tanah di Indonesia, (Bandung: Mandar Maju, 1990), page. 18-19

⁷Herman Soesangobeng, Filosofi, Asas, Ajaran, Teori Hukum Pertanahan, dan Agraria, (Yogyakarta: STPN Press, 2012), page. 7.

whole custom event requires a stationary object called land. How complex the value of land makes most people willing to give their lives for property rights on land.⁸

Land is a very important aspect, it needs to be managed properly in accordance with justice. This is to maintain and protect the land as part of the community. In order to ensure the implementation of national land management and to create a fair management, a special body is formed which dealt with the land issue, namely the National Land Agency of the Republic (BPN RI). Now, BPN is the central in the management of agrarian field or land.

One of the most important tasks is BPN through its policies responsible for the implementation of land registration. Article 3 of Government Regulation Number 24 of 1997 concerning land registration, the purpose of land registration is:

- a. To provide legal certainty and legal protection to the holder of the right to a plot of land, apartment units and other registered land, so as to easily prove himself/herself as the land holder
- b. To provide information to the interested parties, including the government, to easily obtain the necessary data in establishing legal acts concerning the listed land and apartment units.
- c. For the implementation of the land orderly administration.

A significant process is land registration. The implementation of land registration allows the concerned parties to easily know the status or position of the law of the particular lands, they will know its width and the boundaries, who the owner is and what burdens are thereon⁹. Thus it will get a certainty of land ownership rights and because after land registration people will get certificate as a proof of land rights.

Registration of land rights is a necessity after making a sale and purchase transaction on the land, it can be sale and purchase transaction, exchange, grant, giving with a will, giving according to custom and other deeds intended to transfer rights to other parties. In order to obtain certainty of land ownership rights and because with the registration of land will be issued a proof of rights called land rights certificates.

⁸ Bernard Limbong, *Hukum Agraria Nasional: Himpunan Peraturan-peraturan Hukum Tanah*, (Jakarta : Margaretha Pustaka, 2013) page 1

⁹ Eddy Ruchiyat, *Sistem Pendaftaran Tanah Sebelum dan Sesudah Berlakunya UUPA*, (Bandung : Armicho, 1989). page.37.

Registration of land other than the obligation of the government is also an obligation for those who have land rights, with the intention that they obtain legal certainty about their rights and indeed the obligation needs to be affirmed. Otherwise those who have the right do not know their obligations or neglect the obligation, whereas the overall registration of land which is burdened to the government and has been issued a lot of energy and cost it will be in vain without the support of people who have the rights mentioned above.¹⁰

Law No. 5/1960 on the Basic Regulations on Agrarian Principles enacted on September 24, 1960, known as UUPA, is the implementation of Article 33 Paragraph (3) of the 1945 Constitution. Before the coming into force of the LoGA, only for land subject to Western law Right of Eigendom, Right of Erfpacht, Right of Opstal, registration of land which aims to provide assurance of legal certainty and to him is given the evidence with a deed made by Officers. Private land rights do not occur by land registration activities.

The registered land must have authentic proof in written form. The authentic evidence is made in the form of a certificate of land which consists of a copy of the Land Book and Measure Letter. Issuance of certificates of land legally means the state recognizes ownership of the land against those whose names are registered in the land certificate. The other party cannot disrupt the ownership claim on the land.

Government Regulation No. 24/1997 Article 1 states that land registration is a continuous and regular series of activities undertaken by the Government includes collecting, processing, bookkeeping, presenting, and maintaining of physical data and juridical data, in the form of maps and lists, land parcels and apartment units, including the provision of a certificate of title to the existing landrights and the ownership rights of the apartment units and certain rights which are burdensome.

Article 3 of Government Regulation Number 24 of 1997 concerning land registration, the purpose of land registration is:

- a) To provide legal certainty and legal protection to the rights holder of a plot of land, apartment units and other registered rights so as to easily prove himself / herself as the holder of the right

¹⁰Djoko Prakoso dan Budiman Adi Purwanto, Eksistensi PRONA Dalam Pelaksanaan Mekanisme Fungsi Agraria,(Jakarta : Ghalia Indonesia, 1985), page 14.

- b) To provide information to interested parties including the government to easily obtain the necessary data in establishing legal acts concerning the listed land and apartment units.
- c) For the implementation of the orderly administration of land.

The implementation of land registration allows the concerned parties to easily know the status or position of the law of the particular lands, they will know its width and the boundaries, who the owner is and what burdens are thereon.¹¹

The realization of land registration, as intended in Article 19 of the LoGA, was originally issued by Government Regulation No. 10 of 1961 and then amended by stipulation and enactment of Government Regulation No. 24/1997 concerning Land Registry replacing Government Regulation No. 10/1961, Government Regulation No. 24/1997 got regulation complete and detailed in the Regulation of the Minister of Agrarian Affairs or the Head of the National Land Agency Number 3 of 1997 as a condition of its implementation.¹²

According to the provisions of Article 1 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration in question with land registration are:

"The land registration is a continuous and regular series of activities undertaken by the Government includes collecting, processing, bookkeeping, presenting, and maintaining of physical data and juridical data, in the form of maps and lists, land parcels and apartment units, including the provision of a certificate of title to the existing landrights and the ownership rights of the apartment units and certain rights which are burdensome.

In the customary law itself, people previously knew land registration institutions. The existence of land registration institutions is in order to improve services to the community that has changed the situation and needs. Land rights are recorded in land books and issued as proof of ownership of the land. Transfer of rights, such as sale and purchase, exchange, and completed grants, followed by registration at the Land Office

¹¹Eddy Ruchiyat, Sistem Pendaftaran Tanah Sebelum dan Sesudah Berlakunya UUPA, (Bandung : Armicho, 1989). page.37.

¹²M. Yahya Harahap, Kedudukan, Kewenangan dan Acara Hukum Agraria, (Jakarta : Sinar Grafika, 2003), page. 82.

2. Public Service

Public service activities are organized by government agencies. Government agencies are collective designations including units of work of ministries, departments, institutions, non-departmental government, the highest and highest state institutions, and other government agencies, both central and regional, including Regional Government Enterprises. As recipients of public services are people, communities, government agencies and legal entities. Public service activities or also called public services, which are usually attached to the body of government agencies considered less able to fulfill their duties in accordance with the expectations of society, as their consumers. One is considered as the cause is a form of bureaucracy, so the bureaucracy is:

"It is the type of person who is meant to achieve great administrative tasks by systematically coordinating (regular) jobs from many people."

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Bureaucracy is not a bad concept. Bureaucratic organizations have regularity in the implementation of work because it has a clear division of labor and job structure. Therefore, the bureaucratic component has the responsibility and authority to carry out its obligations. The implementation of work in bureaucratic people is set in mechanisms and procedures so as not to experience irregularities in achieving people's goals. In a bureaucratic organization all forms of relationships are formal and tiered based on the structure of the applicable person so as to demand compliance with the procedure applicable to that person.

The ideal characteristics of bureaucracy according to Max Weber include:

- a) Unclear division of labor,
- b) The existence of hierarchy of positions,
- c) The existence of consistent system settings.
- d) Formalistic principles
- e) impersonality
- f) Career-based placement
- g) The principle of rationality

With the existence of regional autonomy, it is expected to give a broad real impact on the improvement of service to the community

C. Discussion

1. Barriers to Public Service of Land Registry in Indonesia

a. Human Resources

The effectiveness of an organization depends on "the man behind the system." At the National Land Agency of the Republic of Indonesia, the system and its human resources are gradually and inevitably set. In the context of structuring human resources in accordance with the Regulation of the Head of the National Land Agency of the Republic of Indonesia No. 1 of 2013 on the Pattern of Career of Civil Servants in the Environment of the National Land Agency of the Republic of Indonesia. The number of employees at BPN up to December 31, 2013 reached 20,499 Persons. However, this should encourage the creation of a fair land registration.

As an illustration to show the performance of the apparatus of service, which is in the land office by the service officers of the bombing office, for example, two examples of services quoted from the voice of readers of Kompas 11 November 2008, as follows:

"Taking care of the cheap, easy and fast land certificate is only on television. In fact, the National Land Agency of Semarang City is not. To take care of the land certificate, there are many things to take and it takes time. First, register the measurements. Applicants should seek officers to be invited to the field or to the location of land to be made a certificate. Second, register SKPT. Third, register to A

committee. Fourth register certificate SK. So for certificate registration, it is necessary to register in four register places. Regarding the cost of course as a matter of equity problems because each register there is acceleration, which need lubricant (money). If not, the applicant must wait for the moment, no time limit. For the A committee, the officer usually sees the location of the land. If the decree is made, nit is not immediately sent. The applicant must make an agreement first, especially for applicants whose land is large and located on a large street. After all is done, the new SK is sent to the counter. For registration SK who live for just so long ago. Applicant must meet the officer. There make a deal first. If you do not want to make an agreement, you will wait for so long. This is the BPN. It makes everything complicated, why it is made easier. (Hartoyo, road of Murbei II / 45 Semarang).

Providing good service is one of the company's efforts to create satisfaction for its customers. If consumers feel they have got good service, it means the company is able to provide good service as well. Vice versa, service cannot be described objectively like a product, but it is a social interaction with subjectivity, more dependent on value, feeling and behavior.

The definition of quality above implies that the elements of quality are:

- a. Quality is a dynamic condition
- b. Quality is related to service products, human, process and environment.
- c. Quality involves meeting or exceeding customer expectations.

Communities will feel satisfied if they get a good quality service. A.SMoenir expresses his opinion on the concept of effective service as a quality service is "Service that is fast, pleasant, does not contain mistakes, follow the process and fun, and procedures that have been predetermined.

The survey results conducted by EPPS (Enter for Population and Policy Studies) of Gajah Mada University on "Public Service Performance" in West Sumatra, Yogyakarta and South Sulawesi. 02 (2001: 1) under the title "Bureaucratic Corruption in Indonesia" to the Land Affairs Office mentioned that 58% of the service users of the three provinces gave grease money to facilitate their service delivery to the Land Office.

Whereas in showing the performance of services to the public, the process should be adjusted to the procedures and pledge of Civil Servant, so there is no more frills for the grease. This indicates the absence of moral commitment of the apparatus and the lack of professionalism of officers in carrying out their performance in serving the community.

The culture of service quality here is very invisible. The quality culture of service should be an organizational value system that will produce an environment conducive to the formation and quality improvement continuously. The culture of quality consists of philosophy, beliefs, attitudes, norms, values, traditions, procedures, expectations for improving quality. In order to create a culture of good quality requires a thorough commitment to all members of the organization. The effort to shape the culture can be done through the development of a coordinated program that begins with the selection and development of employees.

In addition, for example, to encourage community participation in land registration mechanism, the People Service Program for Land Certificate (LARASITA) was established. Based on the Regulation of the Head of National Land Agency of the Republic of Indonesia Number 18 Year 2009 regarding LARASITA, this program is aimed to provide legal certainty in the process and make it easier for people who want to certify the land.

Larasita is a mobile land service (mobile land service) that is proactive or "pick up the ball" into the community. The larasita program carries out all land services within the administration area of the Land Affairs Office of the Regency/City online by utilizing satellite-linked technology using internet and wireless communication system facilities. This program aims to improve the service to the community who is waiting or passive to become active by directly visit the community will take care of the land certificate, as well as change the paradigm of society that considers the process of making a certificate of land convoluted. As an innovative study, the birth of LARASITA based on the desire to fulfill the taste justice is needed, expected and thought by the community, and the awareness that the heavy task cannot be solved only from behind the desk without opening up to the interactivity of the community whose welfare becomes the main objective of the management of land. At the same point LARASITA is proposed as a solution.

Karanganyar District is as one of the areas that became part of the implementation of this program becomes important to be an example of how the program is running.

Karanganyar Regency, Central Java Province bordering with Sragen regency, Surakarta city, and East Java province has 10 districts and 177 villages. The size of the territory cannot be denied to be a problem for the community to access land registration services.

Based on the evaluation in the period of 2002-2004, it is known that the addition of certified land in Karanganyar is still less than 100 fields, there were 34 villages in 10 sub-districts or about 20-25% of the total plots of land in those villages. These villages are generally located in sub-districts far enough from downtown Karanganyar (more than 20 kilometers). Public transportation is still limited, so people in remote areas of the village difficulty accessing services.

But this program requires the improvement of skills and expertise of the apparatus, so there is a need for special training for its officers. This program requires adequate facilities and infrastructure and professional personnel because it uses High Technology System. Therefore, in running this program required the readiness of facilities and infrastructure and human resources are reliable. This is difficult to do with the condition of human resources that do not have the quality and skill.

This program requires adequate facilities and infrastructure and professional personnel because it uses High Technology System. Therefore, in running this program required the readiness of facilities and infrastructure and Human Resources are reliable. The lack of consistent implementation of land service reform. IrDoddy promised will not tolerate administrative sanctions if he finds irregularities perpetrated by the land office officials in his area. Citizens are also asked to proactively provide complete information or are willing to witness when there is a distorted land office apparatus, such as asking for charges outside the provisions.¹³

It cannot be denied that the problem is very serious, not only cultural issues, but also with regard to aspects of human resources are very minimal in carrying out the implementation of land registration. Human resources can not only be done from internal, but also basically must involve third parties in carrying out the registration of land.

Targets echoed by the Jokowi government in implementing land reform and massive land registration with a target of 5 (five) million land titles. This requires a lot of human

¹³Sri Suryanti, kinerja Aparat Pelayanan Pada Kantor Pertanahan Kota Semarang. TESIS. 2009, Program Pascasarjana Universitas Diponegoro, Semarang. Page 22.

resources even if you look at the current condition data still require 700 measuring power to run the program in the field so that will achieve the targeted goals.

Basically in some cases, BPN has issued a policy in the implementation of land registration performance involving other parties. For example in this case, because human resources are very limited, it involves an external surveyor. It is none other than in order to create a new mechanism in implementing the completion of the implementation of land registration at this time. Through Regulation of Head of BPN Number 33 Year 2016 About Licensed Surveyor or known as Licensed Surveyor Service Office (KJSKB).¹⁴

But along with it, then it becomes a new problem. Because there needs to be guarantees how this licenses issued. It makes absolutely guarantee to create the implementation of fair land registration.

b. The Minimum of Land Infrastructure

There is still limited coverage of areas that have been mapped in the base map, thematic maps and soil potential, as well as other textual and spatial information. This will have an effect on the land management programs that require the acceleration process. The program and accelerated asset legalization activities (certification) of community land and state property (BMN). For example, it requires juridical information/technical data/availability of basic maps and other accurate and up-to-date land maps. In the interest of development and investment development, the availability of thematic maps in the land sector is needed to provide broader access to information to stakeholders (community, government and business). Access to this information includes the availability of land, the potential value of the land, the ability of the land, the economic value of the land and the area, the status of the land and many others. Thus the availability and up-dating of information/spatial data and textual land becomes the main requirement in realizing the focus of the national development direction, especially in the field of land.

For 2013 the target of land map was 2,894,200 Ha, it realized 2,531,542,78 or 87,47%. the land map was a performance aspect of the regional work unit. In addition to the above mentioned land targets. The central work unit (BPN Pusat) also executes mapping activities of land.

¹⁴Tanti, interviewed with National Land Agency Indonesia, 2 June 2017.

It cannot be denied that human resources are still very less, in terms of infrastructure. All this is not another and not because it is still needed many problems experienced. This is because in the implementation of this existing infrastructure cannot be used directly by BPN because it is closely related to other organizational areas¹⁵. For example in the aspect to know the condition and picture of geospatial information that exist in a region, it needs information from Bakorsuntanal.

It cannot be denied that the question of merging land register affairs, which is the task of BPN, and the affairs related to land use arrangements, which have been spread over several ministries are two very difficult things because it will run the system cross-institutional nature that has each authority.

In terms of service use desktop with system Loc land office computerization has been done since year 2009 until 2015 system used to migrate from desktop to Basic Web. Then in 2014 to 2017 a full decentralized web is recorded by the Center at BPN Office. At this time, it is known as Computerized Land Office (KKP). This becomes an activity in the computerization of all land registration activities in Indonesia. It is instructed in accordance with the mandate of Presidential Regulation No. 17 of 2014 and Presidential Regulation No. 20 of 2014.

This development basically provides a new direction in the existing service because it has a fairly established infrastructure. Therefore, it is expected to produce a maximum service. However, in the field, this infrastructure is not used optimized properly and correctly.

c. Land Disputes and Conflict

The number of land cases due to disputes and conflicts has the potential to cause social upheaval/vulnerability. Land conflicts, some are from the past, it cannot be denied that this can be an obstacle in general development program, and the fulfillment of justice access to the economic resources of society in particular. Settlement of land disputes and conflicts through the legal system (judicial institutions) is sometimes not able to fulfill the people's sense of justice. Thus, a prompt, appropriate, permanent settlement and a satisfactory sense of justice for society are needed.

¹⁵Tanti, , interviewed with National Land Agency Indonesia, 2 June 2017.

For the handling of strategic cases and socio-political impacts, an Ad Hoc Team consisting of 14 teams has been established as the Decree of the Head of the National Land Agency of the Republic of Indonesia no. 227 / KEP-25.2 / IV / 2013 On April 4, 2013 on the Establishment of a Team for the Assessment and Handling of Land Cases that Potentially Strategic Conflict jo. Decision of the Head of the National Land Agency of the Republic of Indonesia No. 702 / KEP-25.2 / IX / 2013 Date 27 September 2013 On Amendment to Decision of the Head of the National Land Agency of the Republic of Indonesia No. 227 / KEP-25.2 / IV / 2013 On April 4, 2013 on the Establishment of a Team for the Assessment and Handling of Land Cases that Potentially Strategic Conflict.

During 2013, the number of land cases that entered the National Land Agency of the Republic of Indonesia reached 4,544 cases, consisting of the remaining cases in 2012 that have not been completed as many as 1888 cases and new cases as many as 2656 cases. The number of completed cases is 2,632 cases or 57.92% of all incoming cases spread in 33 provinces throughout Indonesia. When compared with the target of handling and completion of land cases in 2013 of 2,800 cases as stated in the 2013 Performance Determination, then the cases that have been completed are as many as 2632 cases or 94% of the targeted.

Land disputes that occur require a solution that can give positive effects to the community. Data from Semarang City Land Office of 2013 (September) showed that land disputes reached 350 cases, with 326 of them completed either through mediation or police or prosecutors, while land cases reached 73 cases with 54 completed cases. From the description how clearly illustrated the settlement of land disputes conflict has almost 70% successfully completed. However, this does not mean that this can be appreciated for granted. In addition, the substance of justice resulting from the dispute resolution process should provide justice to all parties involved. Thus, not only the resolving cases are seen as a benchmark, but also the extent to which the quality of decision resulting from the process of dispute resolution.

The National Land Agency (BPN) of the Republic of Indonesia stated there were about 8,000 land conflicts that have not been resolved. Sawit Watch mentioned about 660 conflicts in oil palm plantations and the People's Coalition for Justice Fisheries (KIARA) said agrarian conflicts in the fisheries sector throughout 2012 involved at least 60 thousand fishermen. While the Agrarian Reform Consortium (KPA) found about 1,700 agrarian conflicts, including plantation cases, forestry and mining. Especially in 2012, the Agrarian

Reform Consortium recorded 156 peasants detained without proper legal process, 55 people were injured and tortured, 25 peasants were shot and 3 people were killed by agrarian conflict.

Many agrarian conflicts lead to violence. The most obvious victims of the violence are children (see box 1) and women. Komnas Perempuan (Woman Protection Agency) in the 2010 Annual Report of Violence against Women described how women become victims of sexual harassment in the event of agrarian conflict¹⁶. By seeing the number of violent conflicts around the national, it can be used as an inspiration to be used to gather problems that arise at the level of Semarang City, mainly protection against conflicts affecting women and the poor. With the availability of a special grievance system for women, children and the poor, it will be very useful for the development of public services for vulnerable people.

1. Principles of Fair Land Registration

a. Provision of Legal Status from Land and Land Rights

With the implementation of land registration, it also gives the legal status, in the form of rights to the land in accordance with the rights in the request.

If a person requests property rights, building rights or use rights, then the land registration, there will be a arise of the legal status of the land being the property, HGB (Property Right) or HGU on behalf of the approved applicant. It means, with the registration of a person's land contains a Land Ownership Right, HGU on land, HGB on land and other rights. If it is not registered then there is no Right to own, HGU, HGB or other Right to Use. Likewise, on the land that originally had a right over it, if there is a re-registration of the name of course also given a new ownership status for those who pleaded to return his name.

In granting the status of a right under the name, there must be a legal act on that right. The act of law referred to is the act of transfer from the first person who has registered the right to a second person (other party) who receives the right to the so-called transfer of rights. Under the terms of this transfer law this may be done by sale and purchase, the lease of exchange, grant, inheritance, auction, merger and entry inhering (see Article 37 of Government Regulation No. 24 of 1997 yo article 2 BPN Chief Constitution Number 7 years

¹⁶Komnas Perempuan, 2011. Teror dan Kekerasan terhadap Perempuan: Hilangnya Kendali Negara. Catatan Kekerasan terhadap Perempuan Tahun 2010, page. 41.

2007). At this stage the role of PPAT as a recorder of legal acts to make the deed of sale and purchase, deed of lease-rent or other PPAT deed must be fulfilled. So this transfer becomes legitimate and can be re-registered. With the existence of this PPAT deed will later be given a new status of the request behind the name requested by the party who received the transfer of rights.

So either the first registration (initial) or the re-registration of the name (continuous registration) carried out at the local Land Office shall remain the work of the State administration in granting the legal status of the concerned land. So, the land has the status. The owner receives the status of rights protected by the State in accordance with his rights.

b. Protection of Land Use or Utilization (Land Tenure)

Land tenure is the activity of land for the owner. It is often called the functioning of land allotment in the daily activities of the owner. The focus of the activity is not on its right but is in its function. The registration of the land will protect the rights of the owner. The right is used limited to the content and nature of the status of the land by the rights owner. The registered rights owner will be able to use and utilize the land for any purpose on the land. It is not prohibited by other rules or conditions. Similarly for example, if the status of the land is a Utilization Right, the right holder (Cultivation Right) will be able to use such Rights as the allocation in accordance with the stipulated Act (for agriculture, fishery and livestock).

If the Cultivation Right holder use outside his land, for example the owner of a hotel on it, it is certainly contradictory and his land use and construction of the hotel is clearly no longer protected by law. Even if there is a deviation of land use can be one cause of the abolition of that right. Land tenure from Cultivation Right, for example, has been established by law such as for agriculture, livestock, and fishery. Article 28 Paragraph 1 of the UUPA, "the right to use is the right to cultivate land directly controlled by the State, within the period as referred to in article 29, for agricultural, fishing and livestock enterprises".

When it is examined further from the point of land tenure, it is clear that the Right of Ownership is more perfect than other rights, such as Cultivate Right and Right to Use. Property rights can be used for agriculture, non-agriculture and other uses, and any use without violating the Act. However, the Cultivate Right and Property Right are only used according to the allocation of those rights only, clearly not as widely as the use of land ownership rights. So with the registration of the land is then a right holder is free and

protected by law to use it. Unregistered land use may be irregular and often violate the stewardship of pre-planned land.

c. Deed Registration and its Right (Deed Registration and Title Registration)

The registration of the land is the registration of the deed and registration of its rights (registration of deeds and title registration). Registration of land behind the name (continues recording) is an activity of the registration of the Deed and the registration of its rights. However, for the occurrence of this activity (back linking name) often contains actions/legal actions done previously. Such actions are called private conveyance actions. This is then followed up by the creation of deeds by PPAT. PPAT in this case will obviously be seen as the duty of the Land Affairs Agency. Thus it is commonly recognized that the system of recording rights concerning 3 (three) systems namely:¹⁷

- a. private convincing;
- b. the registration of deeds; and
- c. the registration of title.

d. Adjudication of Land Register

The activity of adjudication in land registration shall be for the registration of land which is firstly a special procedure whose process is carried out on the granting of legal status to the parts of the land which are rightly owned by the authorized owner.

In article 1, paragraph 8 of Government Regulation No. 24/1997, the aforementioned adjudication shall be "activities carried out in the framework of the land registration process for the first time, including the collection and determination of the truth of physical data and juridical data concerning one or several objects of registration of land for registration purposes". The actual task of adjudication is the judiciary, namely to give a decision. But it is found in the registration of land given to the executive duties. So in essence, this task is in addition to investigative tasks that examine and seek the formal truth of existing evidence, it is also the task of justification that is making the determination in the validation of evidence that has been examined it. In other words, the executive (as executor) of land registration will examine the truth that the initial juridical data held by the land holders. Then after the truth of

¹⁷Land Administration Guidelines With Special Reference to Countries in Transition, (UN, New York and Geneva, 1996) halaman 15.

the evidence is thoroughly examined and then confessed, it is established and authorized by the adjudication team as an initial evidence to serve as valid evidence, as a basis for granting the right or to be registered for the right.

These adjudication tasks are very supportive in accelerating land registration if it is activated. Even the legal certainty over its manufacture is very certain because it is often done in a country that holds positive publicity. Their role is very active to examine the truth of the proposed letters. If the examined evidence has been declared valid as evidence then determined and decided by the adjudication committee as preliminary evidence to advance in obtaining the right to his land.

In its development, as if this adjudication will replace the task of Committee of Land A or Committee of Land B, it is known in Government Regulation No. 10 of 1961 first. However, it differs greatly, because in the Land Committee A only as an examiner of title, 4 is not authorized to set but only recommend to be processed petition someone's right. Adjudication is in addition to the examiner task of title. He also makes a decision on the initial evidence submitted. So in addition to making recommendations he establishes (as mentioned above justifies or legalizes) evidence so that it can proceed to be listed in the expenditure of his rights.

e. Boundary on Right Status

The rights to the land issued are limited to the type of land rights. The authority to grant the right to use cannot exceed the right of use. Thus, the rights granted are limited to the type of rights acquired or the land that is registered. It is at this point that we can see the perfection of property rights compared to other rights to the land. Both right to use and right to disposal will look more perfect than other rights. If we take the land on behalf of HGU then it is very clear once the use of HGU only for agriculture, livestock, and fishery purposes.

Outside of the designation, it is not possible for the HGU (Cultivate right) to be used beyond the provisions of agriculture, livestock and fisheries. Likewise the HGB (Property Right) is only given to a person to build a building on land directly controlled by the State or the land of others. So clearly every right to land has a boundary limited to the type of rights itself.

Because it is mentioned the most perfect property rights among the types of rightscivility called by UUPA. So perfection is seen if the holder of the property rights will utilize the right, as may use for anything above his property, as long as it does not conflict with the established legal provisions such as social functions and spatial use of the city. A person may plant above ownership and may build a building on his property and may lease it on the other side either partly or completely. Withthe authority of the owner of the right kind exists indicating that the rights to the land have restrictions on the respective rights recognized or as determined by law.

All types of land rights, either land rights that are publiekrechtelijke or private rights. According to its type, it has the authority to use and utilize. Right to the extent is owned by the owner. In this case the rights owner has the authority to use and utilize such rights to the extent of the content and the content that is in the right itself. The contents and rights of this right shall be obtained when the land is registered or there is a status of its rights. This is indeed in line with the meaning of the right itself, ie when it is seen in general (generalized).

Those rights in law are the authorities that the law gives to the owner or the holder, to rule and entitled to enjoy and take the results. However, the enjoyed and the results taken can only be as big as the contents of the right. Hereinafter may be seen later the right of ownership is different with right of use and right of use of building, and or other right of the land. The authority is different according to the type and right what is given by the law to a person holder. The right difference exists because there is a registration on it. If a person registers the right it is the same as limiting him to be protected as much as his rights.

f. Cadastral Survey

In order to the land registration process meet technical requirements that can be held technically accountable as required by law, it must be filled with data and technical information so that the right was issued as a right to land clearly can provide information about technical. It has met the principle of specialism correctly. With this fulfillment gives all the land information that can be seen in the tape of his land. In order to meet these technical requirements it must be done with a cadastral survey. This cadastral survey is a step that cannot be done in land registration.

Without accurate and mature measurements, it will be unclear where the boundaries of the soil, how large it is, and where the base point coordinates. So also the mapping of the land must be done so that the known coordinates of the coordinates are determined. With the measurement and mapping of the boundaries of the land will also be able to eliminate later disputes over the land. Even to support this limit properly, people who are adjacent to the land must also participate to give testimony. By affixing their respective signatures so as to meet the principle of *contradictoire delimitatie*, known in the registration of the land. Because once the actual cadastral measurement is done that is the size of the land forever without disputed again. Until the land or the rightful person, make changes to it. If there is no change in the land and the person then the cadastral measurement is no longer an obligation to be re-measured. But for some land by the Land Office still do the measurements.

Even though the cadastral survey is only done with simple equipment, it does not manifest a firm measure without the implementation of the cadastral survey being carried out on the land to be registered. Hence the importance of cadastral surveys in land registration, even by the government created a special institution thereon. Provided to private institutions for the process of acceleration and accuracy are good. This is as regulated in the Regulation of the Minister of Agrarian Affairs / Head of BPN Number 2 Year 1998 has been established that for cadastral survey can be done by licensed surveyor.

It is mentioned that the cadastral surveyor is "one who has expertise in the field of cadastral measurement and mapping and has the ability to organize cadastral measurement and mapping work authorized to perform certain cadastral measurement and mapping work in the course of land registration, either as a community service business or as an employee legal entity that seeks in the field of measurement and mapping".

g. Land Parcel Information

Every time there is a land registration, then there will be information that must be given to the executor so that the land can be registered properly. Even after the registration of land will come the information about the land. In addition to physical information there is also juridical information that must be met, so this is recorded in every land book. With the recordings available in this land book then the actual registration of the land will provide information about the land. Either on the basis of first-time registration information as well as on information from transitions and other legal acts on the basis of land that has been

recorded and recorded in the land books. This will be the one that is also one of the goals of the land registration. As clearly stated in article 3, "land registration aims to provide information about the land".

D. Conclusion

1. Summary

The obstacles in the public service of land registration are the obstacles faced in the implementation of the land policy, there are as follows: 1) The limitation of land infrastructure; 2) Disputes and Conflict and Land Affairs; 3) Human Resources. In addition, there are several principles to improve public service of land registration, namely 1) Provision of Legal Status; Protection of Land Rights; 3) Registration of Deed and Right; 4) Restrictions on Land Rights; 5) Land Adjudication; 6) Cadastral Survey; 7) Creation of Land Information

2. Suggestions

The public service paradigm puts only procedural elements and legal certainty should be avoided in the present era. Along with the development of time that cannot be denied, then the law must also adapt to the current situation and conditions. The existing legal constructs still hold many holes in this matter can be seen from legal substance, legal structure, and culture. Therefore, to fill it needs a new mechanism.

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