
Implementation of Complete Systematic Land Registration Regulation in order to Achieve Legal Certainty in Indonesia

Nadila Maysila Herdarezki¹(corresponding author), I Gusti Ayu Ketut Rachmi Handayani², Lego Karjoko³¹Department of Law, Universitas Sebelas Maret Surakarta, Indonesia; nadilamaysilaherdarezki@gmail.com²Department of Law, Universitas Sebelas Maret Surakarta, Indonesia; ayu_igk@staff.uns.ac.id³Department of Law, Universitas Sebelas Maret Surakarta, Indonesia; legokarjoko@staff.uns.ac.id

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ABSTRACT

This legal research aims to examine the implementation of regulations on the Complete Systematic Land Registration in order to achieve legal certainty in Indonesia. This legal research is a normative or doctrinal legal study conducted with a review of the literature. The research approach is conducted using statute approach and legal comparison approach (comparative law). This legal research uses both primary and secondary legal materials regarding the implementation of the Complete Systematic Land Registration in Indonesia. Based on the results of this legal research, implementation of the Complete Systematic Land Registration Program is a form of policy issued by the Indonesian Government with the Ministry of Agrarian Administration/National Land Agency to register land that has not owned a proprietary certificate. In order to achieve the legal certainty for the community is required improvement of good quality of public awareness, implementation mechanisms and various parties related to the Complete Systematic Land Registration in Indonesia.

Keywords: land; complete systematic land registration; legal certainty; policy

INTRODUCTION

Land is part of living environment, Government of Indonesia has a concern for national policy on the environment. Land is a way to achieve national development in order to create prosperity for the people. Therefore, in order to achieve prosperity and welfare of the people, then it utilizing and using the land is part of natural resources must be implemented wisely and in the management is handed over the state. The national policy on a dotted environment at fundamental values in preserving the environment (including the land) is based on the concept of sustainable development. ^[1] Sustainable development is based on welfare and fairness in the short, medium and long term to balance economic growth, social dynamics and environmental needs. ^[2] The concept of sustainable development relates to the necessity of fulfillment of human needs and fulfillment of needs in future generations. ^[3] Utilization of natural resources needs to be a special concern for the government because it affects the needs of between generations. ^[4] Land is one part of the environment that has essential value for living creatures. Land has an important role for living creatures in the joints of life, especially human beings have the need for a very close land in life.

Land became one of the supporting factors in the growth of human blossoms in life. The existence of land is very important, of course in line with human needs for the management of land in order to grow life. Important essential value in the land management become a concern for the Indonesian nation. The ideal aim of the Indonesian nation is to promote the general welfare and the life of the nation as contained in the Constitution of the Republic of Indonesia of 1945, in this case that relates to the same rights and opportunities. In the utilization of natural wealth including land in Indonesia. The Indonesian Government's efforts are also evidenced by the part of article 33 paragraph (3) of the Constitution of the Republic of Indonesia namely, "*earth, water and all natural riches contained therein are controlled by the state and used to effectively for prosperity of people of the country.*" The important role of land is a special concern from the Indonesian Government. It is indicated by the regulation governing the land management.

In 1960 it became a historic momentum in the agrarian field experienced by the Indonesian nation. The Indonesian Government and legislative institutions have established a regulation which is then poured out in Law No. 5 of 1960 concerning the basic rules of agrarian principles hereinafter referred to as the Principal Law of Agrarian in Bahasa Indonesia it called as Undang-Undang Pokok Agraria (UUPA). The fundamental thing that underlies the birth of these legislation is the surface of the earth in the form of land area used for the survival of living creatures, in this case humans, relative remains while the rate of human growth (population) is increasing. That factor becomes a forerunner to the need to achieve the legal certainty of the security of tenure, which is necessary for the protection of land rights, especially in its patronage and possession. The security of tenure is a

highly relevant study in Indonesia. It is in line with the inaugural speech of the Dean of the Faculty of Law of the Universitas Sebelas Maret, Professor.Dr. I Gusti Ayu Ketut Rachmi Handayani, who stated that "necessary arrangements related to ownership, access, mastery and control over land, trees, water and other natural resources." [5] Law No. 5 of 1960 concerning basic agrarian regulations as the key to the important role of land, with a broader study that the earth, water and space have a very important function to build a fair and prosperous society. [6]

Through the existence of Agrarian Act became a real step of the government of Indonesia in terms of mastery of land rights that rests on the realization of justice and prosperity in the development of Indonesian society. The basis of the implementation of land administration under the Agrarian Act is under the provisions of article 2, especially paragraph (2) which is the authority of the rule over state run by the government as the embodiment of the state in motion (*staats in beweging*) include:

- a. Regulate and administer the provisions, use, inventory and maintenance of the earth, water, and space;
- b. Determine and govern the legal relations between people and Earth, water, and space;
- c. To determine and govern the legal relations between people and the deeds of the earth, water, and space. [7]

The real effort made by the Indonesian Government is realized by the implementation of land registration. Land registration has the purpose as stated that, "*the purposes of land registration derives from challenges to land possession observed from the long history of land occupation, ownership and disposition and; from the centrality of land in the life of man.*" [8] Based on this, it is known that land registration has an important role to know about the historical ways of ownership and mastery of land considering land as the main factor of the centrality of human life.

In term of talking about land registration, it is not only a special concern in Indonesia, but also in the international scene, one of which is the country of France. France pay particular attention to the arrangement of property and land in its country, it is known based on:

"The main interests are real property, which is a perpetual right, e.g. the building lease mentioned above, and emphyteusis which is a right limited in time. It is also worth mentioning accessory interests, namely easements, bare property rights and usufruct resulting from the division of property, or the right to use or inhabit land, as well as securities." [9]

The interests of the property in the form of rights, property and other rights such as land rights or rights in the form of ownership or right of mastery requires protection that is assured of its legal certainty.

Indonesia has also had regulations relating to land. The guidelines for the implementation of land registration in Indonesia are governed by article 19 of Law No. 5 of 1960 on Basic Agrarian Regulations which become basis for land registration in order to ensure the legal certainty of land rights, These include:

- (1) To ensure the legal certainty by the government is held land registration throughout the territory of the Republic of Indonesia according to the provisions stipulated by government regulations.
- (2) Such registration in paragraph (1) of this article shall include:
 - a. Measurement of land-keeping and accounting;
 - b. Registration of land rights and the transfer of such rights;
 - c. Giving of letter-proof of entitlement, which applies as a strong proving device.
- (3) The registration of land is conducted with the state and society, the need for socio-economic traffic and the possibility of its implementation, according to the consideration of the Minister of Agrarian.
- (4) In the Government regulation shall be governed the costs concerned with the registration of the intent in paragraph (1) above, provided that the people who are unable to be exempt from the payment of such fee charges.

It is knowable that from the provisions of article 19 of Law No. 5 of 1960 on Basic Agrarian Regulations, is an effort to concern the government in order to regulate and maintain land registration throughout the Indonesian territory. Such efforts become an obligation for the Indonesian Government to organize and conduct land registrations aimed at proprietary rights holders, building rights, rights of use, and use rights and management rights to be obliged to register rights to the land held, so as to achieve the welfare of the public as well as the legal certainty in the corridor drafting Law No. 5 of 1960 on Basic Agrarian Regulations.

Land registration is a government obligation for the purpose of guarantee the legal certainty. Land registration throughout the territory of the Republic of Indonesia is organized by the Indonesian Government, in order to regulate the legal relationship between the subject and the object of land areas. [10] One of the background need for land registration because there is still a lot of land in the Indonesian region that has not yet been certified and still uses proof of ownership in the form of Letter C, even there are still many cases that proof of ownership owned by the community is only physical possession of land. Factual conditions regarding the number of land that has not been registered as a homework for the Indonesian government to make a legal effort to ensure the legal certainty by requiring each owner to register their land.

The Government of Indonesia in the framework of land registration has the role and task to provide land registration services throughout Indonesia in accordance with the mandate of Article 19 paragraph (1) of Law No. 5 of 1960 concerning the Basic Agrarian Regulations with the affirmation of "guarantee the legal certainty" of the *rechtskadaster*. *Rechtskadaster* has the meaning that the importance of land registration is limited to assert the rights and ownership of the land and not related to the interests of taxation.^[11] The purpose of legal certainty of land registration can be achieved when it can protect the owner's interests, the status of a plot of land, landowners, land rights, land area and land functions owned.^[12] Another aspect to be achieved in addition to related to legal certainty, the implementation of land registration also has a purpose to provide information to the interested parties as well as for the implementation of orderly administration land. In addition, the Complete Systematic Land Registration Program is a government program to realize a single map in Indonesia.^[13]

The low level of public awareness to register the land is known from the speech of the President of the Republic of Indonesia Joko Widodo at the time of the certificate division, at the end of the year 2014, as many as 126 million land in the entire region of Indonesia has not been certified, of the whole number of the new 46 million land.^[14] Since 2017, the registration of land field in Indonesia increased tenfold, from five million pieces of certificate in 2017, up to nine million in 2018, and until November 2019 to 8.5 million. Various factors related to the low land registration among the community, among others, lack of socialization concerning the land of the rights of society on its land, the cost to be issued in order to land registration. This is compounded by the public knowledge about the important value of land registration, the public understand that the issuance of land certificate with respect to the interest of rights holders in accordance with the physical data and juridical data that has been listed in the Book of land. In this regard, the Government subsequently proclaimed a program called a Complete Systematic Land Registration in Indonesia it called as Pendaftaran Tanah Sistematis Lengkap (PTSL). Complete Systematic Land Registration is one of the program of reform in the field of agrarian in Nawacita President of the Republic of Indonesia Joko Widodo.

Complete Systematic Land Registration is the first land registration activity that is done simultaneously for the first time that is done simultaneously for all land registration objects throughout the territory of the Republic of Indonesia in one village/Kelurahan area or any other name, which includes the collection of physical data and juridical data on one or several land registration objects for the purpose of registering.^[15] The number of land that has not been certified is the foundation of the Complete Systematic Land Registration. The implementation of land registration is a state task implemented by the Government in order to provide a guarantee of legal certainty in the field of land.

Through the Regulation of the Minister of Agrarian and Spatial Planning /Head of National Land Agency Number 6 of 2018 about the Complete Systematic Land Registration, of course got many responses both from the Government and the community. The next thing to be examined is about the effectiveness of the implementation of the Ministerial regulation of Agrarian and Spatial/Head of National Land Agency Number 6 of 2018 on the Complete Systematic Land Registration, given the main points of the regulation of the Minister is intended to ensure legal certainty for communities in the field of land. The author compiled legal research by reviewing the implementation of the Complete Systematic Land Registration (PTSL) in order to achieve legal certainty for the people of the country.

METHODS

This research is a legal study which is a normative or doctrinal legal study conducted by a review of the library of doctrinal research used to examine the application of norms or norms in positive law.^[16] Doctrinal law research is a process for discovering legal rules, legal principles, and legal doctrines to address the legal issues faced by examining the literature materials focusing on conducting analysis and learn the primary and secondary legal materials so that legal research will be able to produce theoretical arguments or new concepts as an attempt at resolving legal issues.^[17] The research approach is conducted using a statue approach and a legal comparison approach (comparative law). This legal research uses both primary and secondary legal materials regarding the implementation of the complete systematic land registration in Indonesia.

RESULTS AND DISCUSSION

Indonesia has a juridical definition of the land stipulated in the main Agrarian Act, there is a limitation on the definition of land stipulated in article 4 of the Agrarian Code which hereinafter stated, "on the basis of the right to master from The country is determined to have various rights to the Earth's surface, which is called the land that can be given and belonged to the people." Based on that, it can be known that the land is juridically encompassing the earth's surface, the right to land includes the rights above the surface of the earth as stipulated

in the legislation. Further, it is presented further in article 4 paragraph (2) of the Agrarian Act that the rights to the land not only authorise to use a certain portion of the earth's surface in question called the land, shall be but also all things which are contained in the Earth and in space, that the powers of mastering include among other lands, which are contained in the earth and in space.^[18]

In the corridor of land legislation, there is a land law which is a synergy between various branches of law related in the field of agriculture. The law of land arises based on a fact that every action and/or legal act of the land (*corpus*) is always intertwined with each other, and involves various elements of law that are governed in various branches of law in both state, administrative, criminal and civil sciences.^[19] Land registration is a form of activity undertaken by the Government in order to achieve legal certainty and legal protection of rights holders on land.

Land registration is not only a special concern in Indonesia, but also in the United Kingdom, it is known through the Land Registration Act 2002, there is an interesting state that, "... *land registration bites both upon ownership and on third party rights, I own land; but others may have rights in that land, for land is an asset that lots of people can do lots of things with, we can live on it, build on it, walk over it, catch fish in river ...*"^[20] It can be noted that land registration becomes a crucial discussion in order to fulfill the interests of the community because of the role of land as a life-support that meets the various needs of human beings in living. Regulations governing land registration are governed by the Land Registration Act 2002, the regulation shall legally govern the provisions on land registration. Pursuant to Part 2 of the First Registration of Title set out in Chapter 1, in section (1), (2), (3) of the Land Registration Act 2002, governs that, any legal land not listed with the types of land, rental fees, franchises, profit in the amount of gross or net, must apply for registration to be registered as the owner of a legal land that was originally not registered.

Slovakia is one of the countries that also strictly regulates land registration, Slovakia also has land registrations such as the registration of land in railways books and the registration of mine books. The registration of land in railways books related to the subject of the registered land is a land listed as a public transport line, while the registration of mine books has the notion that the land is registered with the objectives and regulatory privileges in the field of mining.^[21] The United Kingdom and Slovakia are an example of the need for a clear arrangement of the lands which have not been carried out legally, given the essential values conceived by the land as supporting the life of creatures lives, including human's life.

There are various problems related to the land is a complex problem, one of them about the process of registering the soil. Public awareness needs to be improved considering that many people are reluctant to register their lands. In order to implement the effectiveness of land law, the Government of Indonesia and the Minister of Agrarian and Spatial issued a policy called a Complete Systematic Land Registration, it called as "Pendaftaran Tanah Sistematis Lengkap" (PTSL). This Program is established based on the Regulation of Minister Agrarian and Spatial/Head of National Land Agency Republic Number 6 of 2018 concerning the Complete Systematic Land Registration. The implementation of the first land registration can be sporadically or systematically the registration of land sporadically has the notion that land registration is done by a group of people who will register land that has a status of "old rights". Meanwhile, the registration systematically has the understanding that the land registration is done by the government against a village with land objects that do not have a certificate.

The implementation of land registration was not a new thing in Indonesia, previously there is a similar activity is the National Operations Project Agraria or Indonesian called it as Proyek Operasional Nasional Agraria (PRONA) which has been implemented since 1981, the activity is carried out based on the decree of the interior Minister No. 189 of 1981 about the National Operations Project Agraria. The activities of National Operations Project Agraria were implemented in order to form the Government's efforts in implementing the outlines of state and chess order in the field of agrarian, with a specific exposure that is given certificate to the community. However, as time goes on the implementation of Agrarian National Operations Project there is a noticeable weakness from 1981 to 2016, where from the results of the activity is only able to issue a land certificate of 44% from all regions in Indonesia.^[22] In fact, the percentage of 44% of the total of 126 million land field geospatial in Indonesia.^[23] It can be seen that since the enactment of agrarian law that also governs the registration of land, does not run optimally.

The condition of the people of Indonesia about the low awareness of land registration, supported by the lack of knowledge of society, especially with the condition of society in certain regions throughout Indonesia. The land became commonplace given hereditary generations of their ancestors without the need for a land registration process.^[24] Land ownership in ancient times was only evidenced by the ownership of Letter C. Letter C is a book of evidence issued by the village office where the land is located, the normative definition of Letter C is not clearly listed in the literature. Letter C Implementation is more aimed at the tax withdrawal record because the information about the land contained therein is also not described specifically and complete, the evidence of Letter C as land ownership is exacerbated by careful recording and careful, so that it can cause problems regarding the state of

land that is owned and/or mastered. Thus, it becomes the background of the implementation of land registration program such as Complete Systematic Land Registration.

The Complete Systematic Land Registration is a step of the Indonesian Government in order to ensure the legal certainty and legal protection of the agrarian community, in the possession and ownership of land. Another function of the implementation of the complete systematic land registration to compile land database is structured and systematic in the framework of land management.^[25] Since 1961, there is a Government Regulation No. 10 of 1961 on Land Registration as amended by Government Regulation Number 24 of 1997 on Land Registration. The form of land registration activity was first divided into two namely:

1. The land registration systematically means that the first land registration that is carried out simultaneously includes all land registration objects that have not been registered in the region or part of a village.
2. The land registration sporadic, meaning land registration for the first time concerning one or several objects of land registration in the region/area of a village by individual or bulk.

Furthermore, the legal basis of Complete Systematic Land Registration can be seen in Regulation of the Minister of Agrarian and Spatial Planning or National Land Agency Number 35 of 2016 as amended by regulation of the Minister of Agrarian and Spatial Planning or National Land Agency Number 1 of 2017 concerning amendment to Regulation of the Minister of Agrarian and Spatial Planning or National Land Agency Number 35 of 2016 about Accelerating Implementation of Systematic Land Registration.

There are regulation of the Minister of Agrarian and Spatial Planning or National Land Agency Number 6 of 2018 as renewal concerning land registration. Fundamental thing underlying the change of legislation is because it needs to be done improving the substance or material to adjust to the provisions related to land registration.^[26] To date the legal basis of Complete Systematic Land Registration such as Presidential Instruction Number 2 of 2018 about the Acceleration of Complete Systematic Land Registration, regulation of the Minister of Agrarian and Spatial Planning /National Land Agency Number 6 of 2018 about Complete Systematic Land Registration, joint decision of the Minister of Agrarian and Spatial Planning /Head of national Land Agency, Minister of Home Affairs, Minister of Village, Development of Disadvantaged Regions, and Transmigration Number 25/SKB/V/2017, Number 590-3167A of 2017, Number 34 of 2017 on Preparatory Financing for Systematic Land Registration.

Various problematics also did not escape the implementation of complete systematic land registration, the program that has been oriented to quantity without heed the quality of the problem raises a variety of problems. The problems, among others, of human resources, is the low interest of community participation that then affects the measurement and determination of land boundaries that will be conducted systematic land registration complete, facilities and infrastructures that undersupport, constraints and problems of the juridical and physical realm where there are many land offices that have not submitted the certificate results of complete systematic land registration and various constraints in the land office itself such as incomplete measurement images empty, printed measuring letters, misinclusion of land boundaries and various errors related to the Complete Systematic Land Registration mechanism.^[27] Further juridical constraints are also associated with still many outstanding land objects that have not been taken into the land books and certificates, it is also accompanied by physical constraints that are still many units of physical tasks complete systematic land registration activities that have not yet created a work map before conducting field measurements, there is still a complete measuring image creation, and the quality mechanisms of measurement activities by third parties have not been implemented optimally.

Indonesia as a legal country has the objectives of the law to be achieved, such as legal certainty, justice and benefit. Therefore, in the birth of a statutory regulations or programs from the Government should be able to achieve the objectives that are to be achieved. Implementation of Complete Systematic Land Registration should be able to ensure the legal certainty to the community especially in the field of agrarian. It is in line with Aristoteles's theory of the purpose of the law in order to achieve good life and the required quality of law, the law is ideally seen from power to govern in order of interest and common good.^[28] Aristoteles stated that, "*laws are rules that produce a kind of order in the actions and desires of the citizens, which are devised in rational manner by a legislators and which are effectively.*"^[29] It is also known that the law is a set of rules for the order that is designed to be rational and effective by regulatory makers. This, also in line with the legal purposes described by Thomas Hobbes is "... *the law should be the greatest weight of all once people transfer rights for the sake of peace, which defines justice as keeping covenants...*"^[30] The essential purpose of the law according to Thomas Hobbes is for social order, human beings can achieve the meaning of peace when it reaches the social order of law enforcement. Through law enforcement, human beings can regulate the pattern of behavior which can be done and not be done accompanied by the rights and obligations attached to it through the array of regulations.

The law should protect social interests among other public security, social institutions, morality, social needs, economics, culture and political development as well as the sociality of the individu interests.^[31] Roscoe Pound provides a basic difference about sociological jurisprudence with sociology of law, with the fundamental

difference of sociological jurisprudence on matters of practical nature that is how the law is implemented while sociology of law on theoretical issues.^[32] Roscoe Pound contributes to the thought that the law needs to be addressed from the theoretical (law based on book) Law of being in reality (law in action). The law is not only what is written in the legislation, but also what is done by law enforcement, community and various parties concerned in carrying out legal functions in accordance with the concept, thus the law serves as a means of change of society (law as a tool of social engineering). The Roscoe Pound itself distinguishes the law into two senses, among others:

1. The law as a sense of the law, has a substantial core material that:
 - a. The relationship between humans and other individuals.
 - b. Conduct of individuals affecting other individuals.
2. The law as a means of the basis of the authority of the Court's decisions and administrative actions.^[33]

The legal theories of Aristoteles, Thomas Hobbes and Roscoe Pound, when concreted factually in accordance with the policy of the Government of Indonesia in order to regulate the registration of land that has not had a proprietary certificate, where the law in this case is the policy of government programs issued functioning as a means of social change. The Complete Systematic Land Registration Program that has been designed by the Government should ensure the legal certainty in accordance with the normative objectives of the law.

Complete Systematic Land Registration Program is one form of policy issued by the Indonesian Government in the field of agrarian. Political will or government will need to be supported by various stakeholders so that the planned program can run effectively. Complete Systematic Land Registration Program in order to ensure the assurance and legal protection, and in order to reduce the problems or disputes that will arise, the Ministry of Agrarian Spatial or the National Land Agency conducted a series of refinements of various regulations/legal bases written, improving the quality of human resources, improving the quality of facilities and infrastructure, increase the financing budget, and improve coordination between the National Land Agency and related coordination outside the National Land Agency. It is intended with the intention that public participation may increase if the Government provides information, adequate infrastructure facilities to the public.^[34]

Implementation of complete systematic land registration can be done more maximally with some breakthroughs that may be used as options, among others:

1. Increase public awareness regarding land registration with the active role of socialization counseling organized by the relevant parties.
2. Involve the participation of self-sufficiency in the process of measuring and mapping the land field.
3. Invite the active role of private company participation in the form of corporate social responsibility program.
4. Shorten the announcement period from one month to fourteen (14) days.
5. Provide the mechanism for the acquisition of Rights on Land and Building I in Bahasa Indonesia it called as Bea Perolehan Hak atas Tanah dan Bangunan (BPHTB) which is the levy of land rights and/or buildings payable for low income communities.^[35]

Through possible breakthroughs, expected implementation of the complete systematic land registration Program in ensuring the achievement of legal certainty in the field of land in the context of ownership and mastery of the soil can be evenly perceived by the community.

CONCLUSION

Complete Systematic Land Registration Program is a form of policy issued by the Indonesian government together with the Ministry of Agrarian Administration/The National Land Agency to register land that has not been certified proprietary. Land registration is a government obligation for the purpose of guaranteeing legal certainty. The purpose of the program is in line with the theory given by Roscoe Pound that the law is a social engineering tool, in which the implementation is not only in the theoretical realm but also practical from various parties to achieve the objectives of the law. However, in its implementation there are various problems both in juridically and physically. So, it takes various efforts in terms of improving the quality of the public awareness, implementation mechanisms and various parties related to the complete systematic land registration in Indonesia.

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