

# Existence of Institutions and Officials in Land Registration Activities in the Early Independence in Indonesia

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## ABSTRACT

Land Registration is a very important issue because it is the beginning of the birth process of proof of ownership of land rights. It is important that the land registration issue so that the country needs to issue legislation governing land registration activities throughout Indonesia. Departing from such a requirement, this paper presents three points as the material of the discussion. First, how is the legal basis of land registration at the beginning of independence? Second, how the institutional land registration in early independence; and third how the existence of land registration position in the early days of independence? Through normative and juridical studies, the obtained explanation as follows: Land registration in the early days of independence has not to change Dilaksanakan by the registration position due to the law in the religious field that has not been in form. To fill the void of law still enforced based on Article II of The Constitution of the Republic of Indonesia in 1945. Further, the law was formed Number 7 of 1958 about the transition of duty and agrarian authority to officials from the Ministry of Agrarian.

**Keywords:** *institutional, officials, registration, land*

## 1. INTRODUCTION

The legal system in Indonesia is still pluralistic, which is the configuration of various statutory products. The legal configuration was initiated from the national statutory products after the proclamation of independence, the legislation and jurisprudence of the Times of the Dutch East Indies, the local customary law, Islamic law, and international conventions and foreign legal prenuip [1]. The configuration of the law is also included in the Agrarian law in Indonesia, including the land registration system.

Explore the history of land registration in Indonesia starting from 1620. On 18 August 1620, Vereenigde Oostindiscnie Compagnie (hereinafter referred to as VOC) issued a form of information which was the first basic laying for the cadastral implementation and the implementation of the rights registration in the Dutch East Indies. The property stipulates that "*baljuw (bailuw) and scheepen*" shall hold the registration of all the yards and trees given by the VOC as well as the recording of the names of their owners [2]. In terms of terminology, it was found the term land registration in Latin called "Capitastrum", in France called "Cadastre", in the Netherlands and also in Indonesia with the term "Kadastrale" or cadastre " [3]. Cadastre is a technical term

record that shows the breadth, value and ownership (or other rights of the right mat) against a field of land.[3] In addition to functioning to provide descriptions and identification of a plot of land, the cadastre also serves as a continuous recording of a land right [4].

On 23 July 1680, the VOC issued a plaque governing the structure and duties of the Board of Heemraden. Dewan Heemraden is a government agency that has a power area outside Jakarta. This plaque is the basis for the cadastral implementation in a modern sense [4]. Based on the Article 1 Paragraph (1) Of Government Regulation Number 24 Year 1997, Land registration is a very important issue because land registration is the beginning of the birth process of proof of ownership of land rights. Land Registration is a series of activities undertaken by the Government continuously, continuous and orderly covering the collection, management, opening and preservation and maintenance of physical data and juridical data in the form of maps and lists on the areas of land and one-unit of flats including the giving of proof of rights to the land areas of existing rights and property of the units of flats and certain rights that provide it. It is important that the land registration issues so that the country needs to issue legislation governing land registration activities throughout Indonesia.

After Indonesia became independent on 17 August 1945 as a sovereign nation, it immediately reshuffled the rule of law of colonial Dutch East Indies because it is not in accordance with Pancasila and The Constitution of the Republic of Indonesia in 1945. One of the laws that need to be replaced is agrarian law, because in the course of the history of agrarian law in Indonesia during the occupation of the Netherlands Hindia there is a dualism of agrarian law of Western Agrarian Law and customary agrarian law. Tracing the history of the development of legislation, especially agrarian law is very important because history will provide invaluable information to know, understand and assess the background of the journey of the Regulation.

Through the history of law, it will be able to explore various aspects of Indonesian law in the past. This will be helpful to understand the methods and institutions of the law that exist in Indonesian society, ranging from legal history research that can be known about the possibility of legal institutions that are not needed anymore or still need to be developed in building national law, e.g. in National Agrarian Law.

Because of the discovery of documents on the implementation of land registration in pre-colonialism and also land registration on indigenous peoples in general, then discuss the development of land registration in Indonesia, in essence, is the development of land registration regarding the land of Europe.[3] In the early days of independence the Land Registry was still about the European lands, not covering the land of Indonesia that is owned by the indigenous people.[3]

Provisions of article 1 paragraph (3) of The Constitution of the Republic of Indonesia in 1945 which mentions expressly that the state of Indonesia is legal. The principle of the legal state one of which is to ensure the legal certainty, among other things that in the life of the state and society requires the presence of evidence that determines the rights and obligations of a person as the subject of law in Community. Thus, the need for written proof of authentic deed is very important in line with the development of claims of legal certainty, both at the national, regional and global level.

The existence of institutions and officials in a constitutional order is very necessary, because it is the embodiment of the personification of the country. The state in a constitutional concept in carrying out its functions is represented by the government. The Government in carrying out its functions and duties in realizing the objectives of the State is also represented by officials, both in the affairs of Public Law and private law.

Based on the above background, then about to with concerning the registration of land, then special for land registration in this discussion will trace the existence of the institution and officials in the land registration activities in the period of independence until With the enactment of agrarian Law on 24 September 1960. Thus the formulation of problems in this study, namely: 1) How is the legal basis of land registration at the beginning of independence? 2) How to institutional land registration in early independence; 3) How is the existence of land registration position in the early days of independence?

## 2. METHOD

Research methods related to the above problems than used Jenis Research Law is normative juridical research (Legal research) because it wants to study about the existence of institutions and officials in land registration activities in Indonesia in the period after independence until the time of the enactment of Agrarian main law. The methods of the approach used in this study include 1) the of-approach, which is to study the legislation[5] relating to land registration; 2) approach to the concept (conceptual approach), by studying and understanding Concepts[6] on the Institutional Land registration in Indonesia. Whereas, Teknik material analysis is done by means of law materials categorized and compiled systematically. Techniques for analyzing the use of the system's inner achievement in technical analysis of legal materials, such as grammatical interpretation, historical interpretation, and systematic interpretation.

## 3. RESULTS AND DISCUSSION

### A. Legal Basis of Land Registration at the Beginning of Independence

Proclamation of Indonesian independence 17 Agustus 1945 has two important meanings for the establishment of national agrarian Law, namely: [7]

1. The Indonesian nation decides to do with the colonial agrarian law;
2. Indonesia as well as forming the National Agrarian Law.

On 18 August 1945 Preparatory Committee of Indonesian Independence (PPKI), led by President Sukarno held a hearing, resulting in the decree of the preparation of The Constitution of the Republic of Indonesia in 1945 as the Constitution of the Republic of Indonesia. Although the Indonesian nation has been independent, to form the National Agrarian Law is not

easy and takes a long time. Meanwhile, there are a lot of issues faced, which must be resolved and can not be established including the institutional and officials who do land registration or in the colonial era known as a cadastre. Therefore, while awaiting the establishment of national agrarian law and in order not to happen to void the law, it has been stated in Article II of the transitional rules of The Constitution of the Republic of Indonesia in 1945, i.e. "All state agencies and regulations are still valid, as long as it has not held a new one under this Constitution", the Colonial agrarian law is still valid as long as the rules of law do not contradict the Constitution 1945 post Amendment, whose provision has not been revoked, has not been changed New law.[7]

Some of the rules of colonial agrarian law are not expressly revoked until the enactment of the Basic Law of Agrarian, some of these rules are contained in:[7]

1. agrarische Wet, Stb. 1870 Number 55
2. agrarische besluit, STB. 1870 Number 118
3. grandvervreeming, STB. 1875 Number 179
4. agrarische Intergentielsrecht
5. Burgerlijk Wetboek

Thus before the Constitution, apply several Western agrarian law on the other hand, and also applies the law of agrarian Adat and agrarian Law of Swapraja.[7]

Because of the discovery of documents on the implementation of land registration in the pre-colonialism and also land registration on indigenous peoples in general, then discuss the development of land registration in Indonesia in Its essence is the development of land registration regarding the lands of Europe. At the beginning of the independence period, the land registration remains concerning the lands of Europe only, not covering the land of Indonesia that is owned by the indigenous people.

In connection with the government of Indonesia in 1948 has begun the administrative effort to develop the basis of the new agrarian law, which will replace the agrarian law of the colonial government, with the establishment of The Agrarian Committee domiciled in the capital of the Republic of Indonesia, Yogyakarta. The Committee was established with the designation of the Republic of Indonesia No. 16 dated 21 May 1948 chaired by Sarimin Reksodihardjo (Head of Agrarian Department of Interior Ministry) and consists of officials from various ministries and positions, members of the Board of Workers of KNIP representing the organizations of farmers and regions, indigenous legal experts and representatives of the

plantation trade unions, this committee is known as the Committee of Agrarian Yogyakarta.

The efforts undertaken by the Indonesian Government to adjust the colonial agrarian law to the circumstances and needs after independent Indonesia are:

1. Using new wisdom and interpretation  
In the implementation of agrarian law is based on the new wisdom by using the new interpretation that corresponds to the Soul Pancasila and article 33 paragraph 3 The Constitution of the Republic of Indonesia in 1945 new interpretation here, for example, is about the relationship between the state with the land, no longer use Domein verklaring, i.e. the state is no longer a landowner but the state as the organization of the power of all Indonesians only

2. Removal of Conversion Rights  
One of the feudal (landlord) that is very detrimental to the people is the conversion agencies that occur in the residency of Surakarta and Yogyakarta. In this area, all land is considered to belong to the King. RAKyat just uses it. During the reign of the Kings, the law of the land was carried out based on a system of feudalism which was essentially the land belonging to the king and the people belonging to the king who could be used for his benefit and honor. [8] The patch is named the Apanage patch.

There are several obstacles in the completion of the legal status of the former land, namely in the case of law, land status, administrative, institutional, and cultural.[9] based on Law No. 13 of 1945 which repealed Stb. 1918 No. 20, and supplemented with Law No. 5 of 1950, which is expressly stated that the conversion agencies, as well as the conversion rights and hypotheses that provide it to be abolished.

3. Elimination of particulical soil  
At the time of the occupation, it was issued in the land of the Dutch East Indies government in the form of particulate matter, which contained the right of the exchange. Based on law No. 1 of 1958 on the elimination of the Particulkelir Lands, 24 January 1958, the rights of the Landlords of the land and the rights of the exchange have been removed, and the land of the former partiers because the law was wholly concurrent into the land of the state. After Indonesia's independence, the government OF RI made the purchase of the particulate lands, but

the results were not satisfactory because of the unavailability of sufficient funds because the landlord concerned demanded a very high price. Law Number 1 the year 1958 on the removal of the land of Patikelir, the rights of the landowner of the land and the rights of his/her charge remove. The land of these former subterranean lands all together into the land of the state of the land is declared to be clear if the compensation payment is completed.

4. Changes in land rental rules

Regulations on the rental of people's land to large plantation companies in particular and the original non-Indonesian people in general as intended in article 51 paragraph 8 IS for Java and Madura arranged in two rules, namely *Gorondhuur Ordonnantie STB. 1918 No. 88* for direct governance. According to these conditions, land rental is possible at the longest time of 21.5 years.

5. Additional regulation to supervise land rights

In article 1 of Law Number 24 of 1954 which establishes emergency law Number 1 of 1952 on the transfer of land and other fixed goods that are subject to European law, is declared pending further regulation while every use area More than a year and deeds that materialize the transfer of rights concerning lands and other fixed goods subject to European law can only be done after obtaining the permission of the Minister of Justice (with Law Number 76 the year 1957 Of the Minister of Agrarian). This provision is supplemented by Law Number 28 of 1956 on the supervision of the transfer of rights to plantation land and other rights of material. Issued also government regulations of continuity or restoring a decent enterprise controlled by the State with the compensation of damages.

6. Prohibition and settlement of unauthorized land use

To prevent the widespread use of plantation lands by the people without their authorization and to resolve the use of existing land, the emergency Law Number 8 the year 1954 on the settlement of plantation land use By the people. This emergency Act is in another change coupled with Law Number 1 the year 1956.

7. *Regulatory agreement for agricultural land*

The Revenue Share agreement is an agreement between the owner of the farm and the other party as a cultivator, where the pengrake is allowed to do the land by the distribution of the results

according to the balance that has been approved by both parties. Given that the cultivator for the outcome is usually the economy is weak and always harmed, then to protect them issued Law No. 2 the year 1960 quiet Agreement for the outcome. The act is required to make the parties, the Agreement for the proceeds to be made in writing, with the intent to easily supervise and conduct measures against the agreement for Hasil that is detrimental to the cultivation.

B. *Institutional Land Regiattration in Early Independence*

Despite the tidal changes in the constitution in the early days of independence, that constitution 1945 which was passed on 18 August 1945 in the first period only valid until December 27, 1949, thereafter valid constitution of United States of Indonesia under the provisions Article 192 of the Constitution of the United States of Indonesia institutions of the state including the registration of land still acknowledged its existence as long as the new institutional has not been established, this condition remains preserved until the constitution of RIS transformed into Provisional Constitution in 1950 following article 142 Provisional Constitution in 1950 which reads: "The rules of law and the provisions of the business are already in place on August 17, 1950, remain in force with no change as the rules and provisions of the Republic of Indonesia itself, during and merely These rules and regulations are not revoked, supplemented or amended by law and the provisions of the terms of business under the power of this Constitution. "

From the period The Constitution of the Republic of Indonesia in 1945 to the period Provisional Constitution in 1950, Agrarian Affairs is in the Environment of Ministry of Interior. Based on Presidential decree Number 55 the year 1955 formed an agrarian ministry that stands alone apart from the Ministry of Home Affairs. Two years after being formed and the separation of the Ministry of Agriculture from the Ministry of Home Affairs, then in Presidential decree Number 190 the year 1957 in the determination that the Land Registry post entered in the environment of Ministry of Justice diverted in the task Environment of Ministry of Agrarian. Based on Law Number 7 of 1955 was assigned a transfer of the duties and Agrarian authority of the Minister of Home Affairs to the Minister of Agrarian, as well as officials in the area. With the discharge of the Law, then gradually formed agrarian apparatus at the provincial, district/municipality.

To support and continue the task of registering the Land Minister Agraria has issued regulations on the land of Indonesia, among others:

- a. Regulation on the administration of land rights registration (Perregulation Mof Agraria number 9 the year 1959; Additional Country sheets number number 1884);
- b. Regulations on the signs of Land boundary (Perregulation Mof Agraria Number 10 the year 1959; Additional Country sheets number Nomor1885);
- b. Rules on the governance of the measurement and creation of the maps of registration (Perregulation of Mof Agraria number 13 the year 1959; Additional Country sheets number number 1944);
- c. Regulation on land bookkeeping (Perregulation Mof Agraria number 14 the year 1959; Additional Country sheets number 1944).
- d. These regulations have not been able to solve the issue of land registration. Therefore, the Indonesian Government is aware of the importance of governance arrangements including land registration which must be poured out in a law.

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C. *Existence of Land Registration Position in the Early Days of Independence*

In line with this, so if during this period from 1945 to 1957 the institution that carries out the registration of land remained the land registration Office under the Ministry of Justice then based on Presidential Decree number 190 the year 1957 date 1 June 1957, land registration position is transferred into the Ministry of Agrarian, with the task:

- a. Measurement, mapping, and bookkeeping of all lands in the territory of Indonesia.
- b. Bookkeeping on land rights as well as recording the transfer of such rights.

Presidential Decree No. 190 the year 1957 stating that the post of land registration that was originally under the Ministry of Justice transferred into the Ministry of Agrarian: [10]

- a. Gubernur General, directorur van Binnenlands Bestuur and Minister of Interior;

- b. Hoof van Gewestelijk Bestuur, Governor, resident, Hoof van Plaatselijk Bestuur, Regent, mayor, Wedana and other officers of other Praja

With the presidential decree of the Land registration and its officials who were initially under the Ministry of Justice with this Presidential decree then the official and land registration switched and was responsible to the Ministry of Agrarian.

In 1955 based on Presidential Decree No. 55 the year 1955 the President of the Republic of Indonesia formed the Ministry of Agrarian equivalent to other Kemetrian and led by the Minister of Agrarian. The field of the Ministry of Agrarian work in question is:[11]

- a. Prepare the establishment of national agrarian legislation;
- b. Implementing and supervising agrarian legislation in general as well as giving leadership and instructions on the implementation of it in particular;
- c. Doing business to improve the position and certainty of land rights for the people.

The Composition of the Ministry of Agrarian consists of the Ministry, Agrarian Office, and Land Registration office. Each post is headed by the head of Office which is responsible to the minister and is obliged to inform the Secretary-General. Then the Ministry of Agrarian authorities emphasised with Presidential Decree Number 190 year 1957 dated December 12, year 1957 to conduct all efforts to ensure the position and certainty of land rights through the registration of land that includes activities:

- a. Measurement, mapping, and bookkeeping of all lands within the territory of the Republic of Indonesia including forestry areas;
- b. Bookkeeping on land rights as well as recording the transfer of such rights.

For this above, based on the presidential Decree No. 190 year 1957 the registration of land is transferred from the Ministry of Justice to the Ministry of Agrarian and the task and authority of the Agrarian Office to switch from the Minister of Home Affairs to the Department of Agriculture based on Law Number 7 year 1958 about the transition of duty and agrarian authority.

The issuance of regulation of the Minister of Agrarian Number 9 the year 1959 is governed regarding the guidelines on the registration of rights to the land and addressed to new rights or renewal of any rights, then P.M. A No. 9 the year 1959 can already be posted lands other than Which is subject to B. W and is only

valid for Java island and according to Prof. Dr. A.P. Parlindungan, SH. It also applies to areas outside Java such as in Jambi.

The joint letter of the result of the Bumi, the head of Agrarian office, and the head of Land registration Office asserted to use the weekly report of the assistant Wedana related to the change of land rights is the actual report for The title of result of Earth (for the establishment of income tax) which is used also by the Land Registration Office for registration purposes.

If there is no Land registration office, the task of land registration is done by the Office of Agraria District (Article 5a Circular letter). The registration is only against the new property rights vide. Regulation of the Minister of Agrarian Number 6 the year 1959 (amended by Regulation of the Minister of Agraria Number 15 the year 1959). Regulation of the Minister of Agrarian Number 9 year 1959 concerning the guidelines on the registration of land rights, by article 10 stated that the acquisition of land rights referred to is, all legal acts concerning the land and other legal events pertaining to land rights are subject to customary law which resulted in transitional rights such as the guarantee of receivables and the establishment of a new right to the land.

The Deed or agreement shall be made in front of the head of the relevant land registration office and must report the mutation that occurred on the 15th of the following month. And if this reporting is not done then it is deemed as yet the changes have not occurred. The weekly report should be implemented by assistant Wedana who must be submitted first to the Regional Agrarian Office/Land Registry office. While the Petuk D (Evidence OF land tenure) and the TPS remain in the branch office of the Earth's income tax. This is already mentioned in the joint letter of the result of the head of the Agrarian office and the Head of land registration dated 25 March 1960 Nomor Pda 40/28/20 18 Ba/1960.

Land Registry Offices that have not been evenly distributed in Indonesia have caused the implementation of this mutation registration task to be carried out by the local Agrarian Office. However, related to the old right of ownership in the Office of the Tax Return of the Land remained with the agency.

#### 4. CONCLUSION

Based on the discussion can be concluded, among others:

1. Various basic agrarian law that is used is a regulation of agrarian colonial Law and the legislation established as an effort made by the Indonesian Government to adjust the colonial agrarian law with the circumstances and needs after Indonesia independence, such as Law Number 24 the year 1954, Law Number 1 the year 1958.
2. Land registration in the early days of independence has not changed Dilaksanakan by the registration position due to the law in the field of religious law has not been in form, to fill the legal void is enforced based on article II of The Constitution of the Republic of Indonesia in 1945 which was passed on 18 August 1945.
3. Presidential Decree Number 190 year 1957 followed by the issuance of law No. 7 year 1958 on the switching of agrarian duty and authority, then the duties and authority of agrarian which was originally implemented by officials of the officers and other rulers were transferred to officials from the Ministry of Agrarian namely Gobnor General, directeur van Binnenlands Bestuur and the Minister of the interior, as well as hoof van Gewestelijk Bestuur, Governor, Resident of Hoof van Plaatseijk Bestuur, Regent, Mayor, Wedana, and other officers of other Praja.

#### REFERENCES

- [1] Indra Yudha Koswara, "Pendaftaran Tanah sebagai Wujud Kepastian Hukum Dalam Rangka Menghadapi Masyarakat Ekonomi ASEAN (MEA)," *J. Positum*, vol. 1, no. 1, pp. 23–38, 2016.
- [2] Supriadi, *Hukum Agraria*. Jakarta: Sinar Grafika, 2009.
- [3] M. Y. Lubis and Rahim Lubis, *Hukum Pendaftaran Tanah, Edisi Revisi*. Bandung: CV Mandar Maju, 2010.
- [4] U. Santoso, *Pendaftaran dan Peralihan Hak Atas Tanah*. Jakarta: Kencana, 2015.
- [5] P. M. Marzuki, *Penelitian Hukum*. Jakarta: Kencana, 2007.
- [6] J. Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*. Malang: Banyumedia, 2007.
- [7] H. Muchsin, I. Koeswahyono, Soimin, and A. Gunarsa, *Hukum Agraria Indonesia, Dalam Perspektif Sejarah*. Bandung: Refika Aditama, 2010.
- [8] M. Tauchid, *Masalah Agraria, sebagai masalah penghidupan dan kemakmuran rakyat indonesia*. Jakarta: Penerbit Cakrawala, 1952.

- [9] N. Huda, “), Beberapa Kendala dalam Penyelesaian Status Hukum Tanah Bekas Swapraja di Daerah Istimewa Yogyakarta,” *J. Huk.*, vol. 7, no. 13, pp. 90–106, 2000.
- [10] C. Basri, “Pendaftaran Tanah,” *CES*. [Online]. Available: <http://datatanah.peradabanmelayu.my/index.php/pendaftaran-tanah/36pendaftaran-tanah/39-pendaftaran-tanah>. [Accessed: 16-Mar-2014].
- [11] A. P. Parlindungan, *Pendaftaran Tanah Di Indonesia*. Bandung: Mandar Maju, 2009.