

The Concept of Good Faith on Complete Systematic Land Registration in Order to Realize Justice

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Abstract—The Basic Agrarian Law regulates land registration which aims to provide legal certainty. This land registration is an obligation for the government and land rights holders. To ensure legal certainty in land registration, the government issued Ministerial Regulation of Agraria and Spatial Planning Number 6 of 2018 concerning Acceleration of Complete Systematic Land Registration. In the regulation of the Minister of Agraria and Spatial Planning Number 6 of 2018 if the proof of land ownership is incomplete or there is no evidence at all, it can be completed with a statement letter from the applicant. Good faith in this complete systematic land registration must fulfill the community's sense of justice, so that in its application it does not cause new land conflicts. In the regulation of the Minister of Agraria and Spatial Planning Number 6 of 2018 the process of fulfilling the element of good faith does not fulfill a sense of justice because it is not tested by the court.

Keywords—good faith, land registration, legal certainty

I. INTRODUCTION

Article 33 paragraph (3) of the 1945 Constitution stipulates that "Earth, water and natural resources contained therein are controlled by and used for the prosperity of the state". Based on the provisions of Article 33 paragraph (3) of the 1945 Constitution, there are important elements in the exploitation of Indonesia's earth, water and natural resources, including the elements: "controlled by the state" and "the greatest prosperity of the people". These two great elements become the soul of every exploitation of the earth, water, and natural resources called natural resources [1].

Soil is a part of the earth called the earth's surface. The land referred to here does not regulate land in all its aspects but only regulates one aspect, namely, land in a juridical sense called land tenure rights [2]. The juridical provisions governing the existence of land are contained in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (hereinafter referred to as the Basic Agrarian Law), which is the implementation of the provisions of Article 33 paragraph (3) of the Law. The 1945 Constitution. In the Basic Agrarian Law which explains the right to control the state, it is stated in

Article 2 paragraph (2) of the Basic Agrarian Law which gives authority to the state:

- regulate and administer the designation, use, supply and maintenance of the earth, water and space;
- determine and regulate legal relations between people and the earth, water and space;
- determine and regulate legal relations between people and legal actions concerning earth, water and space.

Based on the provisions of Article 2 Paragraph (2) of the Basic Agrarian Law, what is meant by controlling is "regulating" and "organizing" which by the Constitutional Court through its decision gives firmness to the scope of the meaning of "control" namely making policies, regulating, administering, manage, and supervise. The authority relates to (a) the use/designation, supply, and maintenance of the earth, water, space, and natural resources in the territory of the Unitary State of the Republic of Indonesia; (b) determination and regulation of land rights; (c) determination and regulation of legal relations between persons and/or legal entities with the object of land. This authority must be aimed at achieving the maximum prosperity of the people. The right to control this state is the right of the people at the state level [3].

In exercising the authority to determine and regulate land rights, the government carries out land registration. Land registration aims to provide legal certainty and protection to holders of rights to a parcel of land, apartment units and other registered rights so that they can easily prove themselves as holders of the rights concerned; provide information to interested parties including the Government so that they can easily obtain the data needed to carry out legal actions regarding registered land parcels and apartment units; for the implementation of orderly land administration.

One of the government's efforts to realize protection, legal certainty and justice are with complete systematic land registration. Complete systematic land registration has processes in determining land rights. In this study, we will assess fairness in the process of determining land rights for complete systematic registration.

II. METHODS

The study in this study uses a normative legal research method, with a statutory approach and a conceptual approach. The approach to legislation is used to describe and examine the consistency/suitability of laws and regulations relating to land registration, namely Government Regulation No. 24 of 1997 concerning Land Registration and Regulation of the Minister of Agrarian and Spatial Planning Number. 6 of 2018 concerning complete systematic Land Registration after a review of the legislation, the next step is to review the regulation using a conceptual approach. The conceptual approach that will be used in this paper is the concept of justice.

III. RESULTS AND DISCUSSION

Article 33 paragraph (3) of the 1945 Constitution states that the earth, water and the wealth in it are controlled by the state. The provisions of Article 33 paragraph (3) of the 1945 Constitution are redefined by Article 2 paragraph (2) of Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles, Article 2 paragraph (2) of the UUPA states that: The right to control the State over land gives authority to the state to:

- Regulate and administer the designation, use, supply, and maintenance of earth, water, and space;
- Determine and regulate legal relations between people and the earth, water and space;
- Define and. Regulates legal relations between legal actions concerning earth, water and space

The state's right to control as referred to in Article 33 of the 1945 Constitution and explained in Article 2 of the Basic Agrarian Law provides the concept of State Controlling Rights over land, the state is given the authority to a. regulate and administer the designation, use, supply and maintenance of earth, water and space; B. determine and regulate the legal relationship between humans and the earth, water, and space, c. determine and regulate legal relations between people and legal actions regarding the earth, water, and space [4].

In realizing Article 33 paragraph (3) of the 1945 Constitution, one of them is by way of land registration. Land registration throughout the territory of the Republic of Indonesia is carried out by the Indonesian government, in order to regulate the legal relationship between the subject and object of land parcels. According to the provisions regulated by government regulations. This is contained in Article 19 paragraph (1) of the Basic Agrarian Law. The implementation of the land registration is an instruction given to the government, in this case, the National Land Agency, whose implementation is in the Land Office.

The same level, which includes the collection and determination of the correctness of physical data and juridical data regarding one or several objects of land registration for the purposes of registration. The implementation of a complete systematic Land Registration is carried out in several stages,

namely: planning, Determination of Location, preparation, formation and determination of the Adjudication Committee for a complete systematic Land Registration, counselling, physical data collection and juridical data collection, juridical data research for proof of rights, the announcement of physical data and juridical data as well as ratification, confirmation of conversion, recognition and granting of rights, bookkeeping of rights, issuance of land rights certificates, documentation, submission of activity results and reporting.

In the stages of the process of implementing a complete systematic land registration, collecting, processing and maintaining physical data and juridical data, determining rights and registering land using a list of entries, blanks, maps and other lists as well as entries or entries in the KKP application. The Head of the Land Office must ensure the suitability of the data generated from the Complete Systematic Land Registration activity with the electronic data in the KKP application. In the context of optimizing and simplifying the implementation of Complete Systematic Land Registration activities, then: (a) physical data collection activities by the Physical Task Force and juridical data collection by the Juridical Task Force are carried out by 1 (one) team for each village where the object of Systematic Land Registration is located. Complete; (b) physical data collection and identification of land parcels can optimize the third party and community participation; (c) juridical data collection activities must be coordinated with the Village/Kelurahan Government so that the juridical data of participants in the Complete Systematic Land Registration activity can be collected collectively at a pre-determined place for each village.

Physical data collection is carried out through measurement and mapping of land parcels. Physical data collection is carried out by the Physical Task Force based on the provisions of the legislation. Field measurements and mapping, carried out using survey and mapping technology, consist of terrestrial methods, photogrammetric methods, satellite methods, or methods of a combination of the three methods. In measuring land parcels, the Physical Task Force must know data or information about each owner or party entitled to their land, at least in the form of a photocopy of the Identity Card/Family Card/Certificate of Population from the authorized agency. In carrying out its duties, the Physical Task Force may be assisted by a Licensed Cadastre Surveyor, KJSKB and/or a Company Legal Entity engaged in surveying and mapping geospatial information through procedures and financing by the provisions of laws and regulations.

Juridical data collection includes: collecting evidence regarding land ownership or control, both written evidence, witness statements and/or statements in question. Juridical data collection is carried out by the Juridical Task Force based on the provisions of the legislation. In carrying out its duties, the Juridical Task Force may be assisted by the Juridical Data Collector through procedures and financing by the provisions of the legislation. Juridical data collection is carried out through collecting and examining the history of land ownership

as outlined in the Juridical Data Research Minutes. If the evidence of community land ownership is incomplete or non-existent, it can be completed and proven by a written statement regarding the ownership and/or physical control of the land parcel in good faith by the person concerned. The element of good faith consists of the fact that physically controlling, using, utilizing and maintaining land from generation to generation within a certain time and/or obtaining it by not violating the provisions of the legislation. Good faith is evidenced by a statement by the applicant or participant of the Complete Systematic Land Registration Adjudication stating that there are no objections from other parties on the land owned or not in a state of dispute; and does not include or are not: assets of the Government, Regional Government, or State-Owned Enterprises/Regional-Owned Enterprises; or Forest Area.

The recapitulation of juridical data that has been stated in the Minutes of Juridical Data Research regarding land parcels that have been mapped in the map of land parcels shall be included in the List of Juridical Data and Physical Data of Land Sector. To fulfil the publicity principle is proving land ownership, juridical data and physical data of land parcels and maps of land parcels are announced using the form of Announcement of Physical Data and Juridical Data for 14 (fourteen) calendar days at the Office of the Adjudication Committee for Complete Systematic Land Registration and the Office of the Adjudication Committee for Complete Systematic Land Registration. Head of the village/village. Interested parties are allowed to file objections regarding the Announcement of Physical Data and Juridical Data during the announcement period. After the announcement period ends, the physical data and juridical data are validated by the TSL Land Registration Adjudication Committee which is made in the form of an Official Report on the Legalization of the Announcement of Physical Data and Juridical Data. If at the time of ratification of physical data and juridical data there are still incomplete data or there are still objections that have not been resolved, then the physical data and juridical data are still validated by providing notes on the Minutes of Validation of Physical Data and Juridical Data regarding the incomplete and/or unresolved objections. If there are parties who file an objection, a written notification shall be submitted to immediately file a lawsuit to the Court. Objections are recorded in the List of Objections or Rebuttals to the Announcement of Research Results on Physical Data and Juridical Data.

The completion of the Complete Systematic Land Registration activity consists of 4 (four) clusters, including (a). Cluster 1, namely land parcels whose physical data and juridical data meet the requirements for the issuance of a Land Rights Certificate; (b). Cluster 2, namely land parcels whose physical data and juridical data meet the requirements for the issuance of a Certificate of Land Rights but there are cases in court and/or disputes; (c). Cluster 3, namely land parcels whose physical data and juridical data cannot be recorded and a Certificate of Land Rights is issued because the subject and/or object of the rights have not met certain specified requirements; and D). Cluster 4, namely land parcels whose objects and subjects have been registered and have certificates of Land

Rights, both uncharted and mapped but not under field conditions or there are changes in physical data, must be mapped into a Complete Systematic Land Registration Map.

The description above describes the complete systematic land registration process. There are two types of publication systems in land registration, namely the positive publication system and the negative publication system. The difference between the two publication systems lies in the type of registration system. The positive publication system always uses the registration of titles system, while the negative publication system always uses the registration of deeds system. In the United States, this deed registration system is called "Land Recordation" which includes the registration or recording of documents that affect land rights [5].

In the negative publication system in the deed registration system, the Land Registration Officer (PPT) does not test the correctness of the data contained in the deed (passive). Deeds in the land registration system serve as evidence of strong legal events or actions. Every time there is a change in the land certificate, a new deed must be made and the required juridical data must be found in the relevant deeds. However, to obtain juridical data, a title search must be carried out which can be time-consuming and costly because it uses expert assistance. In addition, the state does not guarantee that the physical data and juridical data listed in the certificate are correct, as long as it is not proven by other evidence. If the data in the certificate is incorrect, either register error or fraud, changes can be made based on a court decision. However, in this negative publication system, the state does not provide compensation to parties who lose their land rights due to registration errors or fraud.

The positive publication is an improvement or refinement of the previous registration system. The improvement in the quality of the land registration system is indicated by the convenience for landowners to obtain juridical data without having to do a title search on existing deeds and provide legal certainty on registered land [6]. The positive publicity system involves identifying one or many parcels of land and determining who or what person or organization can have rights to that plot of land, which is then recorded in the land register. Before recording, the Land Registration Officer tests the correctness of the data contained in the deed before registering the rights in the Land Book (active) and compiles all matters relating to the recording of land rights, such as liens, easements, mortgages, leases, and agreements. The registration of land ownership includes the recording of the serial number, location, and boundaries of the land parcel marked on the map and the name of the owner [7].

In the positive publication land registration system, there is the issuance of a certificate of title which is used as evidence of the holder of the registered land rights. Land certificates are the most complete and inviolable evidence of land rights holders. The state guarantees that the physical data and juridical data listed in the certificate are correct. Thus, if it turns out that there is a procedural error in the registration that results in

losses for parties who may be more entitled, then the state provides a guarantee of compensation funds [8]. There are three criteria for security guarantees for registered land, namely (1) the property register; (2) the proprietorship register; and (3) the charges register.

In looking at the complete systematic land registration process, it can be seen that the land registration system in Indonesia should be classified as a positive land publication system. However, adhering to a negative land registration system has a positive tendency so that the registration system combines the two land registration systems. The meaning of this understanding is that the land registration system uses a negative system that still allows claims for land rights recognition, but on the other hand the government is trying to obtain facts regarding land registration [9]. land rights. So that the publication system in Indonesia is not clear about wine and the system. In the complete systematic land registration regulation, it is stated that the purpose of land registration is for legal certainty and protection to prosper the community. This objective is supported by a process whereby the state examines and identifies registered land parcels, but the state cannot guarantee the correctness of physical data and juridical data, as a result, the state cannot provide compensation if procedural errors are found in the future or some parties are more entitled. This makes the process not optimal in establishing a land registration system, thus causing a process of injustice. For this reason, the Complete Systematic Land Registration aims to accelerate legal certainty and legal protection of land rights in a safe, fair and accountable manner to achieve prosperity. In carrying out a fair process, it is carried out by appointing fair first evidence, determining the qualifications of land rights that can provide protection. The first appointment of evidence must be based on evidence that has binding and decisive evidentiary power, while for the qualification of rights through the Complete Systematic Land Registration Process, rights that have a period (not absolute rights) and are not allowed for rights that are absolute (property). In addition, the state must guarantee the correctness of physical data and juridical data so that if there is a procedural error or someone has more rights, the state must provide compensation.

IV. CONCLUSION

In carrying out a fair process, it is carried out by appointing fair first evidence, determining the qualifications of land rights that can provide protection. The first appointment of evidence must be based on evidence that has binding and decisive evidentiary power, while for the qualification of rights through the Complete Systematic Land Registration Process, rights that have a period (not absolute rights) and are not allowed for rights that are absolute (property). In addition, the state must guarantee the correctness of physical data and juridical data so that if there is a procedural error or someone has more rights, the state must provide compensation.

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