



Meaning Good Faith in Sporadic Land Registration in Bali

I Made Suwitra^(✉) and I Made Gianyar

Faculty of Law, Universitas Warmadewa, Bali, Indonesia
madesuwitra27@gmail.com

Abstract. This study aims to analyze the nature of good ethics in the sporadic registration of land rights as mandated by Government Regulation of the Republic of Indonesia Number 24 of 1997 and the legal consequences of certificates issued through conversions based on the SPPT-PBB letter. The method used is in the form of empirical legal research with a statutory, analytical and case approach. The results showed that the sporadic registration of land rights in several cases has led to disputes in court because the documents of control that are used as the basis for conversion are only SPPT-PBB and a statement of tenure for more than 20 consecutive years. The Land Office in conducting validation of registration documents is normative and only assesses from one aspect, namely administrative completeness in the form of a statement of control completed with SPPT-PBB. While other conditions such as good ethics are ignored. With the technique of systematic interpretation of the provisions of Article 24 of the Government Regulation of the Republic of Indonesia Number 24 of 1997, it can be analyzed that good ethics is an inseparable part of other requirements in sporadic land registration. So the registration document can be guaranteed coherence and correspondence between one document and another as the basis for claiming ownership so that it is useful to provide assurance and protection for certificates of rights. In the absence of good ethics in sporadic registration, the certificate of title (ownership) on land can be canceled through the court. For this reason, it is hoped that all parties using sporadic land registration should be based on good ethics in the sense of being honest in making claims to the object of rights to be registered so that the issuance of certificates of rights (ownership) does not cause disputes.

Keywords: Good faith · Land registration · Sporadic

1 Introduction

One of the visions of the issuance of Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) is to create an orderly administration in the land sector through the administration of land rights. The aim is to guarantee legal certainty and protection of property rights to land that have been registered and issued a “Certificate of Rights” as proof of perfect and strong ownership.

The issuance of the LoGA and its implementing regulations in the form of Government Regulation No. 10 of 1961 and which has been replaced by Government Regulation

no. 24 of 1997 (PP 24/1997) concerning Land Registration as an early sign of legal unification in the land sector. In other words, since the promulgation of the LoGA on September 24, 1960, the UUPA has since been enacted as a reference basis in affirming and resolving land issues in Indonesia. However, it should be realized that the unification of the LoGA is unique, because it still recognizes the validity of customary law and religious law as long as it has not been explicitly regulated in this LoGA [1]. The enactment of this LoGA is also referred to as a very important milestone in the history of agrarian/land development in Indonesia, namely as an effort to realize legal unification in the land sector [2].

The enactment of the LoGA as a form of legal unification in the land sector, implies that the LoGA with its various organic regulations is used as one of the standardizations for converting old rights (before the enactment of the LoGA) to new rights according to the UUPA as state law with novelty. Guarantee of legal certainty [7].

Legal certainty in the UUPA which forms the basis for its legal political orientation can be conceptualized as a guarantee of confirmation of the physical data and juridical data described in the evidence of rights issued in the form of a "Certificate of Rights" such as a Certificate of Property Rights or SHM which reflects the existence of legal certainty, because it can be proven that there is coherence and correspondence with the object designated in its physical data and juridical data that is informed in the copy of the land book referred to as a certificate.

Truth in the context of coherence and correspondence becomes an inseparable part of the "Good Ethics" of the subject who registers for the first time, which is known as the conversion of old rights to be affirmed and upgraded to new rights according to the LoGA. So the rights to the old land that were previously subject to customary law after being converted through sporadic registration will be affirmed and/or enhanced as rights subject to state law (UUPA) which has the value of legal certainty.

The intended good ethics can be conceptualized as "honesty" on the one hand, and on the other hand there is "property", which is relevant to what Ismijati Jeine stated: that good ethics is the honesty of the parties. The basis for the reference is the provisions of Article 1338 Paragraph (3) BW which formulates: "An agreement must be carried out in good faith". From this provision, it can be interpreted that good ethics has two meanings, namely in a subjective sense and in an objective sense. Good ethics in the subjective sense is called honesty in the form of an inner attitude or a state of the soul in the form of honesty, as formulated in Article 530 BW which regulates the position of power (*beziit*). Meanwhile, good ethics in an objective sense is called propriety, as formulated in Article 1338 BW. According to the administrator of the academic section of PPSN UGM, honesty (good faith) in Article 1338 BW does not lie in the state of the human soul, but lies in the actions taken by both parties in carrying out promises, so honesty here is dynamic, namely in the form of propriety that is rooted in on the nature of the role of law in general, meaning as an attempt to balance the various interests that exist in society [3].

Unification of the LoGA with its uniqueness on the one hand "brings" blessings, and on the other hand brings "problems", as a result of neglecting the "good faith" aspect, either from the individual legal culture or from the existing legal structure from the village level to the district and office levels. The so-called "land mafia". From the

various phenomena observed, the research problem discussed is related to the nature of good ethics in the sporadic registration of land rights mandated by PP 24/1997 and the legal consequences for the issuance of certificates based on the statement of control and SPPT-PBB.

2 Method

The type of research used is in the form of empirical legal research, which is oriented towards the escalation of disputes in the land sector as an implication of land registration and after the issuance of certificates as proof of property rights. In addition, it was observed that there was a neglect of the principle of good ethics for subjects who did land registration for the first time, known as sporadic conversion, thus deviating from the requirements in Article 3 PP 24/1997. Another issue that is very relevant as legal reasoning that needs to be disclosed, namely the efforts of the subject to apply for SPPT-PBB on land parcels to be registered even though it is not coherent with historical evidence of ownership such as tax payment letters known as *Ipeda* and *Pipil* letters. The approaches used are statutory, analytical, customary law and case approaches.

This study uses data sources from the first source and the second source. Data from the first source, known as primary data, was obtained directly from informants, either as attorneys or legal team. In addition, observation techniques are also used related to the existing conditions as experts in court. While the second data source called secondary data or legal material is obtained from primary legal materials, such as: UUPA, PP 24/1997. In addition, it is also obtained from secondary legal materials, such as the results of previous research and thoughts, both those that have been published through textbooks or through journals or in the form of papers, case documents are collected using recording and documentation techniques. The data that has been collected through observation, interviews, documentation, recording were analyzed using hermeneutic techniques to find the legal culture of village manners and the legal structure of customary villages in interpreting good etiquette in land registration.

3 Discussion

3.1 The Existence of Property Rights on Land

Macpherson, distinguishes between property and merely having physical property. Ownership is defined as a right that can apply either to land or to existing individual property. Owning an ownership is having a right, meaning a compelling claim against a use or benefit of something, whether it is the right to participate in the enjoyment of public resources or an individual right to certain property. So what distinguishes property from mere temporary ownership is that property is a claim that can be imposed by the community or the state, by custom, agreement or law [4].

Relevant to the concept of property above, Mac Iver states that property rights are not wealth, but the right to control, cultivate, use, or enjoy wealth or property [5]. Meanwhile, Panesar stated that the concept of property or ownership refers to the rights rather than the object, which is expressed by the term: “property, in legal terms, therefore means

a right to thing rather than the things itself'. Thus, property or ownership is not just a relationship between a person or legal entity with objects or goods that have a value that can be legally controlled, but the legal relationship makes legal subjects obtain what is called ownership rights over the object [6].

In Article 570 Burgerlijk Wetboek it can be stated that the meaning contained in property rights, namely as the most important right compared to other material rights, because the owner has the freedom to enjoy, control, and use the objects he owns freely as long as it does not conflict with the prevailing norms. Exists, within the limits of an effort to reasonably meet the owner's needs. Thus the intended control is that the owner of the right can carry out legal actions against his property, such as maintaining, encumbering with other material rights, transferring it, changing its form.

The above conception shows that in ownership there is a meaning of mastery in it, while in mastery it does not necessarily contain the meaning of ownership. Therefore, it is necessary to be careful in understanding the concept of control and ownership both from the *ipso facto* and *ipso jure* approaches, as well as the historical approach, namely paying attention to the relationship between the subject and the object in the periodization of time and historical consistency or the origin of the acquisition of tenure rights, because it often happens that the granting of rights to ride in a very long time, even until there is a new generation, it will be able to result in ownership claims from the next generation born. This condition can arise due to lost information or information that is not conveyed to the actual condition of the relationship between the subject and the object under his control. They only know that he is already there because of the inheritance process from his parents. The implication will be that hereditary control rights will emerge. So when it is determined that land tenure requirements are continuously for a minimum of 20 years as one of the requirements for land registration through conversion of rights, it is often interpreted that tenure for 20 consecutive years automatically becomes the owner of the land. However, this condition cannot be justified, because the provision regarding 20 years is only addressed to the owner, not to people who control other people's land, for example by riding. So even if a passenger is more than 20 years old, it is forever impossible to become the owner of someone else's land, unless he/she obtains it by way of a transfer of rights, for example; buying and selling, grants, or wills. This was emphasized by Anwar Borahima as the Board of Trustees of the Association of Civil Law Students, Faculty of Law-Hasanahuddin University.

In PP 24/1997 in Paragraph 2 of Article 24, it is regulated regarding proof of old rights. So this article will talk about proving the old rights of an owner who wants to register his land. The contents of this Article in full are as follows:

Paragraph (1): For the purpose of registering land rights originating from the conversion of old rights, it is evidenced by means of evidence regarding the existence of such rights in the form of written evidence, witness statements and or statements in question which the Adjudication Committee on registration has confirmed. Systematically or by the Head of the Land Office in sporadic land registration, it is considered sufficient to register rights, rights holders and the rights of other parties that burden him.

Paragraph (2): In the event that no or no complete evidence is available as referred to in paragraph (1), the bookkeeping of rights may be carried out based on the fact of

physical possession of the land parcel in question for 20 (twenty) years or more in a row. Participated by the applicant for registration and his predecessor, provided that:

- a. the control is carried out in good faith and openly by the person concerned as the right to the land, and is strengthened by the testimony of a person who can be trusted.
- b. the control either before or during the announcement as referred to in Article 26 is not disputed by the customary law community or the village/kelurahan concerned or other parties.

So this article intends to stipulate that if a person wishes to register his land rights based on the old rights, then he must complete: written evidence, if there is no written evidence, it can be with witnesses or his own statement whose truth level is considered sufficient. If there is no more written evidence, and/or witnesses, then move on to the second evidence, namely the fact that the applicant or his/her parents/family have physical control over the land parcel in question for 20 (twenty) years or more in a row. His/her ancestors. But even this has conditions, namely:

1. Done in good faith;
2. Not disputed by the community or other parties.

So for those who only control other people's land, even if the period is more than 20 years, there is almost no way to certify other people's rights because the requirements for good faith are already difficult. How can it be judged to have good intentions if someone else's land is then recognized as his own. Likewise with the second condition, how can the land owner not make a problem if he knows that his land will be certified by someone else.

Observing the concepts and norms as described above, it can be stated that land ownership rights will not be transferred with the issuance of a certificate by another party, unless the issuance of the certificate is based on the existence of rights due to the transfer of rights from the owner to another party as the applicant in the issuance of the said certificate.

In view of the conditions in which land rights have been issued certificates by other parties without being based on a transfer, the process and basis for transferring rights through the issuance of certificates is declared legally flawed and invalid, therefore the judge entrusted with examining and deciding the dispute is obliged to give a decision. Regarding the validity of processes and documents in the transfer of rights through the issuance of certificates of property rights by other parties to obtain justice in truth and justice, which is relevant to John Rawls' theory of justice which is called "justice as fairness" [8] meaning that the truth of the results is coherent and correspondence with the fulfillment of good and correct terms, processes and procedures that can risk good ethics.

3.2 Meaning of Good Ethics in Land Rights Registration

Customary law recognizes the principle of "property" which has a fair and definite meaning which is obtained through correct processes and procedures and is based on

good ethics. In addition, it is equipped with coherent and correspondent documents so as to produce truths that can be accounted for both to God Almighty, the community, the Nusa and the Nation. In the field of transfer of land rights, the principle of “cash and light” is known which is very relevant as a reference. The principle of light is oriented towards the delivery (livering) between money as the price of payment and goods (rights) in a reciprocal manner. The principle of light is oriented towards legal actions carried out before authorized officials such as Village Heads, Customary Heads, Pekaseh or before PPAT after the enactment of UUPA PP 10/1961 which has been replaced by PP 24/1997. There are several cases that are relevant as data on disputes resolved through the District Court in Bali which are representative in proving the existence of good ethics as the basis for decisions, namely:

From this data table an analysis can be given, that the transfer of land rights carried out has ignored the principle of good ethics by the widow who has transferred the rights to the inherited land left by her husband due to death, because in Balinese customary law, the widow is not the heir of her husband. And her husband’s family, but only has the obligation and authority to manage so that the proceeds can be used to finance their lives and lives with their children who are still immature. In addition, it is also accompanied by an obligation to maintain her husband’s Sangah/Merajan as an immaterial wirasan property. A new widow has the authority to transfer her husband’s inheritance if she has obtained permission/approval from her husband’s purusa family. Or by her grown son. So the emergence of disputes in the field of customary civil agraria is due to the neglect of the principles of good ethics by widows (cases no. 1, 2 and 3).

In cases No. 4 and 5, it is observed that disputes in the field of customary civil agraria occur because of the neglect of the principle of good ethics by parties who claim rights to other people’s land only based on SPPT-PBB evidence, which is a kind of tax return due on land and building taxes. Which is not coherent with the history of ownership and/or control of land recorded in the land certificate according to the old rights in the form of Pillars, Tax Letters, Letter C, Payment Receipts in buying and selling. The certificate owned by the defendant was obtained through the conversion of old rights through sporadic. This dispute arose when the Plaintiffs would register their rights through conversion with complete proof of ownership, such as Pipil, Tax Letter, Letter C, receipt of payment for the purchase of land rights which in reality had been registered by the Defendant only based on the incoherent SPPT-PBB. With Pipil, Tax Letter, Letter C owned by the Plaintiff. In this case the assessment of “good faith” becomes absolutely necessary through a court hearing as mandated by Article 24 PP 24/1997 to obtain a judge’s decision that is fair and certain which is used as the “final safety valve”. The basic theoretical considerations that can be conveyed are as follows:

Good intentions in law are called good ethics in the form of honesty of the parties. By Ismijati Jenie, it is stated that good ethics has two meanings, namely in a subjective sense and in an objective sense. Good ethics in the subjective sense is called honesty in the form of an inner attitude or a state of the soul in the form of honesty, as formulated in Article 530 BW which regulates the position of power (bezit). Meanwhile, good ethics in an objective sense is called propriety, as formulated in Article 1338 BW. According to the administrator of the academic section of PPSN UGM, honesty (good faith) in Article 1338 BW does not lie in the state of the human soul, but lies in the actions taken by

both parties in carrying out promises, so honesty here is dynamic, namely in the form of propriety that is rooted in on the nature of the role of law in general, meaning as an attempt to balance the various interests that exist in society [3]. So honesty is one of the keywords in preventing disputes in the land sector, because one of the factors that causes disputes in the land sector, among others, is the claim to land rights of other parties.

Furthermore, good faith as a principle has also been implemented in the formulation of norms as *Lex Specialis*, as confirmed in Article 32 paragraph (2) of PP No. 24 of 1997 formulating:

In the event that a land parcel has been legally issued in the name of the person or legal entity that acquired the land in good faith and actually controls it, the other party who feels that he has rights to the land can no longer demand the exercise of that right if within 5 (five) years since the issuance of the certificate, he has not submitted a written objection to the certificate holder and the Head of the Land Office concerned or has not filed a lawsuit to the Court regarding the control of the land or the issuance of the certificate. On the other hand, if the issuance of the certificate is based on a legal act with bad ethics, then the issuance of the certificate in question is invalid and has no binding force. Therefore, it should be done through a lawsuit because only the court has the authority to give a decision on whether or not the issuance of a certificate is not based on good ethics.

Observing good ethics as a principle which is then implemented in several formulations of legal norms, both unwritten law (customary law) and those stipulated in written law such as BW and UUPA, it can be interpreted that every legal act based on good ethics must be protected by good law. Through law or through judicial decisions. It is relevant to the theory of legal certainty as conveyed by Gustav Radbruch, namely on the one hand there is a coherence of existing legal regulations, namely, such as some of the regulations mentioned above with a vision to provide legal protection for parties with good ethics. And at the same time can provide protection fairly in the perspective of benefits. The certainty meant is certainty by law and certainty in or in law [9]. So good ethics is an inseparable part of other conditions in the registration of land rights as a quality standard, that the applicant is a subject who is indeed entitled to the rights to be registered. Therefore, if there is no good ethics, then the act in the registration is considered invalid, as well as with regard to the result.

4 Conclusion

The main purpose of resolving disputes in the land sector through the courts is to obtain confirmation and strengthening of land ownership rights claimed by other parties through registration. So the Judge's Decision which is seen as the last safety valve in deciding the entitled subject according to propriety and honesty which is validated and verified through a trial against the "good faith" of each litigant party. The goal is that the decisions given by the judges are able to provide protection for guarantees of fair certainty and certainty based on documents and evidence that are coherent and correspondent to achieve benefits based on formal and material truth.

In order to achieve results that reflect fair truth or true justice, integrity is needed in the existence of appropriate norms in customary law and state law through several relevant

approaches, such as legislation, customary law, cases, history, philosophy oriented to the phenomenon rather than the subject.. Therefore, good ethics must be used as the basis for absolute considerations and as a unified whole as a system to find out the existence and truth of the rights of each litigant on the claim of ownership of land rights.

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