



Reconstruction of Land Registration Arrangements in Order Towards Legal Certainty

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Abstract. The background of this research is about Article 19 paragraph (2) C of Law Number 5 of 1960 concerning Basic Agrarian Regulations which have not been able to guarantee legal certainty, the article uses a negative publication system, so that the use of the publication system results in giving opportunity for other parties to file a lawsuit against land ownership. This research is a normative legal research using a descriptive method with a qualitative approach. The data sources used in this study are secondary legal sources investigating positive legal norms. The result of this research is that Article 19 paragraph (2) C of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles which uses a negative publication system, to meet changing times and the demands of society's needs must be changed to a positive publication system.

Keywords: Testing · Policy Regulation · State of Law

1 Introduction

The existence of land in human life has a purpose, and at the same time it has dual functions as a social good and a capital good. As a social asset, land is a means of binding social unity among the community for life and life, especially for self-development. The understanding of capital assets, that there is a basis for land is a factor capital in development [1].

Land issues both as social assets and as a capital asset always occur from time to time. These issues are very fraught with justice issues. The regulations on the land system should be continuously updated so that it can adapt to the times and can ensure a sense of justice in the community. Justice can be realized when there is a guarantee of legal certainty, This is, in this case, the legal certainty of owning the land title. This felony reality may be found out if the goods of felony guidelines fashioned to modify the possession of land rights can assure reality of possession of those rights.

One of the goals of Law Number 5 of 1960 regarding the Basic Regulations of Agrarian Principles as said within the rationalization within the regulation is to cause the criminal actuality of land rights. The legal certainty can be achieved by organizing land registration. Land use is governed by Article 19 (1) of Law No. 5 of 1960

on Basic Regulations of Agricultural Principles, which is provided by the Government by keeping land records throughout the territory of the Republic of Indonesia. It deals with guarantees of legal certainty that Granted. The registration of such land is carried out with the provisions regulated by a Government Regulation. The Government Regulation in query is Government Regulation Number 10 of 1961 regarding Land Registration which become later subtle with the aid of using Government Regulation Number 24 of 1997 regarding Land Registration.

Article 19(2)C of Law No. 5 of 1960 on the Basic Rules of Agricultural Principles states that the production of valid documentary evidence is strong evidence. The word “strong” here is not “absolute” so that it causes Article 19 paragraph 2 C to be contrary to Article 19 paragraph (1) which states the existence of a guarantee of legal certainty.

In the general explanation stated about the purpose of Law Number 5 of 1960 is as follows:

1. Laying the foundations for the drafting of a national agrarian law that will be a tool to bring prosperity, happiness and justice to the state and the people, especially the peasant people, in order to a just and prosperous society.
2. Laying the foundations for establishing unity and simplicity in agrarian law.
3. Laying the foundations to provide legal certainty regarding land rights for the people as a whole.

One of the functions of Law Number five of 1960 of Law Number 5 of 1960 regarding the Basic Regulations of Agrarian Principles is to offer legal truth guarantees, so that in the torso of Law Number 5 of 1960 in this case, the articles on land registration must provide a guarantee of legal certainty.

Law Number 5 of 1960 concerning the Basic Regulations of Agrarian Principles and its derivative regulations in this case is a regulation on land registration that is expected to be able to create a fair legal certainty that has not been able to carry out this. Articles in Law Number 5 of 1960 concerning the Basic Regulations of Agrarian Principles and Articles in Government Regulation Number 24 of 1997 concerning Land Registration are not synchronous and mutually interchangeable contrary. In addition to this, the use of sistem land registration is also not appropriate.

With the background mentioned above, this research takes the title “Reconstruction of Land Registration Arrangements in Order Toards Legal Certainty”.

2 Research Method

This research is a normative legal research using a descriptive method with a qualitative approach. The data sources used in this study are secondary legal sources that explore positive legal norms in the form of laws and regulations related to land registry issues.

3 Findings and Discussion

According to the 1960 Agricultural Law Basic Regulations No. 5, soil refers to the surface of the earth, the ground beneath it, and the surface of water. The surface of the

earth is a part of the earth called the ground. Land in the sense of juridical aspects and points of view is called the right of control over land. The right of control over land in the juridical sense is a control based on rights, which are protected by law and the law gives an authority to the owner of the right to controlled the land to which he was entitled.

According to H.M. Arba, the term land rights comes from English, namely land rights, while in Dutch it is called *landrechten*, while, in German, it is *landrechte*. There are two syllables contained in the term land rights, namely rights and land. Rights are also called right (English) *recht* (Dutch), or *rechts* (German). Terminologically, a right is defined as the power to do something (because it has been determined by law) or the right power over something or to demand something. Algra defines a right or *recht* as: "A certain authority granted to a person based on general regulations or certain requirements" [2].

To ensure legal certainty, land ownership must be registered either as an assignment or as a title. According to Ratna Artha Windari, land registration is derived from the word *cadastre* (Dutch: *Kadaster*), which means record that points to the area, value and ownership of a parcel of land. Based on the provisions of Article 19 of Law Number 5 of 1960 concerning the Basic Regulations of Agrarian Principles, land registration includes measurement, mapping and bookkeeping of land, registration and transfer of land rights, the provision of a valid proof of rights as a powerful evidentiary tool.

The definition of land registration according to Article 1 of Government Regulation Number 24 of 1997 is a series of activities carried out by the government continuously, continuously and regularly including collection, processing, bookkeeping and testing as well as maintenance of physical and judicial data in the form of maps and lists of land plots and units of flats including the granting of a letter of proof of rights for existing plots of land and property rights to units of flats and certain rights that burdened him [3].

Land registration is a state policy with the aim of administering land plots, so that there is a land data in a land register that contains the area, location boundaries, and subject of the owner. With the administration of this land, it is hoped that clarity will be created about the object and subject of the owner so as to provide certainty of rights for the owner. A form of certainty of land rights, in the form of a certificate of land rights. This land certificate is a strong proof of rights according to national agrarian law. The meaning of the certificate as strong evidence of a possession shows that if it is proven that the method of acquiring the land is contrary to law then the certificate can be invalidated [4].

The purpose of land registration as stipulated in Article 3 of Government Regulation Number 24 of 1997 is to obtain a guarantee of legal certainty. The guarantee of legal certainty includes: [5]

1. Legal certainty over the object of the land plot, namely the location of the land plot, its boundaries and area (the object of rights);
2. Legal certainty over the subject of his rights, that is, who is the owner (the subject of rights) and;
3. Legal certainty over the type of land rights.

To ensure the certainty of rights, of course, there must be an announcement of a right to be issued. The system of announcement of such rights is called by the name of

Publicity. For the implementation of a legal certainty of land rights, in the implementation of land registration must include: [6]

1. Cadastre rights, that is the activity of measuring and mapping land rights plots and the registration of these land plots in land registers. An immovable property is an immovable property to which the entitled natural or legal person is entitled.
2. Registration of rights, that is the activity of registration of rights in the registers of land books on the holder of the rights.

The system of publications chosen and prescribed by law in the implementation of land registration will largely determine against the certainty and force of law against the ownership of land rights. There are several types of publication systems in land registration, namely:

1. Positive System, namely a certificate as a proof of rights is an absolute proof. As an absolute proof, the property rights can be defended against the parties who sue. Because the positive system is an absolute proof, the system has a legal certainty.
2. Negative System, that is certificates are seen as a strong evidence tool. The meaning of strong does not mean absolute, that is to say that everything listed in the certificate must be accepted as something true, as long as it is not proven otherwise by the other party. The negative system does not guarantee the existence of a legal certainty

The negative system aims to protect the real ownership of land rights, although this system does not guarantee legal certainty. According to HM Arba, the negative system, the transfer of land rights based on *mem plus iuris*, that is, protecting the actual rights holder from the actions of others who transfer their rights without being noticed by the real rights holder [5].

In land registration, there are two registration systems, namely the rights registration system (registration of title) and the deed registration system. In land registrations that use the rights registration system will use the positive publications system. In this system, a certificate is given as an absolute proof, so that ownership of the right can be maintained from the claims of the interested parties. Meanwhile, in the land registration system that uses deeds, it will use a negative publication system. In this system, evidence will be given in the form of a deed, not a certificate in which the holder of land rights can be sued by other interested parties.

With regard to the publication system, it can be seen in the provisions of Article 19 paragraph (2) of the UUPA, namely to the rights holders given strong evidence, in Article 19 it is not stated that a strong evidence is a certificate of land rights, especially if it is observed that the positive publication system is observed as a direct implication of the registration system. rights, certificates are absolute proof. These two things have different legal consequences, as a strong evidence is interpreted that in the judiciary the holder of strong evidence must be considered correct as long as it is not proved otherwise by the objecting party, while absolute evidence completely closes the possibility of a lawsuit against the holder of the evidence [5].

In Article 19 paragraph (1) of Law Number 5 of 1960 concerning the Basic Regulations of Agrarian Principles, it is stated that the implementation of land registration

by the government is in order to obtain guarantees legal certainty of land tenure rights. Furthermore, in Article 19 paragraph (2) C of Law Number 5 of 1960 concerning the Basic Regulations of Agrarian Principles it is stated that the provision of letters of proof of rights, which acts as a powerful evidentiary tool. The strong meaning here is not absolute, so that if there are other parties who can prove otherwise, the certificate can be canceled. Article 19 paragraph (2) C does not provide a legal certainty as mandated by Article 19 paragraph 1, this is due to the granting of an opportunity to the other party to challenge the ownership of the right to the land. In the event that the plaintiff can prove otherwise against the ownership of the right to the land being sued, then the ownership of the right to the land may be void. Although the purpose of the article is to protect the actual owner, but in terms of legal paradigm the article does not contain elements legal certainty.

A guarantee of legal certainty against the ownership of land rights, is the provision of a letter of proof of rights/certificate of land rights as a result of land registration. The guarantee of legal certainty given to the owner of the right by the government in the form of proof of rights / certificates should not be limited to being just a strong evidentiary tool but more than that, namely as absolute evidence. Due to the absolute nature of the certificate, ownership of property rights to the land can be maintained by anyone, so that the provision of legal guarantees as a result of the registration of the land really gets legal certainty.

In Article 32 paragraph (1) of the Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration, it is stated that the certificate is a proof of rights that applies as a strong evidentiary tool regarding physical data and the juridical data contained therein, as long as the physical data and juridical data are in accordance with the data contained in the measuring letter and the landbook in question. The word "as a strong evidence" means that if it cannot be proved otherwise the physical data and juridical data contained therein must be accepted as correct data, in other words, if it can be proven otherwise then the certificate can be canceled.

Article 32 paragraph (2) of the Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration, states that in the event that a plot of land has been legally issued a certificate on behalf of the person or legal entity who acquired the land in good faith and actually controlled it, In that case, a person who believes he or she has a right to the property can no longer legally create it in the name of the person or entity who acquired it in good faith and actually controlled it.. Exercising this right may no longer be required unless a written challenge is raised or litigation is filed with the certificate owner and the head of the respective state office within five years of the certificate being issued. you can't. Brought by the courts in relation to the possession of land or the issuance of certificates.

Registration of lands whose administration is ordered by the Law Number 5 of 1960 concerning the Basic Regulations of Agraria Principles uses a system of negative publications. This can be seen in Article 19 paragraph (2) of uupa and article 32 paragraph (1) of the Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration, which states that the nature of the certificate is as a strong evidence tool. The implementation of the negative publication system experienced various problems, namely the occurrence of demands from parties who felt that they

owned the land. This indicates that the negative publication system does not guarantee a legal certainty to the name stated in the certificate.

The weaknesses of the negative publication system can only be overcome by using an institution called *rechtsverwerking* institution. The *rechtsverwerking* institution is known in the customary law system that regulates a person who abandons and leaves his land for a period of time, then the land is worked on by someone else with good ethics, then the owner will lose the right to his land and the right to re-claim the land. On the basis of the rules in the customary law (*rechtsverwerking*), then in Article 32 paragraph (2) of the Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration is regulated if after 5 (five) years since the issuance of the land rights certificate, the party who feels that they have the right to the land cannot carry out prosecution.

Looking at the description above, it can be concluded that the Publication System adopted in the Law Number 5 of 1960 concerning the Basic Regulations of Agraria Principles is a negative publication system with positive significance. The combination of the negative system and the positive system cannot guarantee that the certificate as a proof of rights has received a legal certainty. It can be observed that before 5 (five) years from the issuance of the certificate it is possible that parties who feel they have land can file a lawsuit and if the parties feel having the land can prove otherwise, then the ownership is transferred. The availability of 5 (five) years for filing a lawsuit is what causes the absence of legal certainty.

There needs to be a fundamental change in the Law Number 5 of 1960 concerning the Basic Regulations of Agraria Principles, which in this case is about the use of the publication system. Article 19 paragraph (2) C should be changed, the word “strong” is changed to the word “absolute”, so that Article 19 paragraph (2) C reads as follows: “The giving of letters of proof of rights, which acts as an absolute evidentiary tool”. The amendment makes for harmonization between Article 19 paragraph (1) and Article 19 paragraph (2) C. In addition to this, akibat from the change of the word “strong” to “absolute”, then there is also a change in terms of publication, where the use of the word “strong” is for a negative publication system and turning into the word “absolute” is for a positive publication system.

One of the weaknesses of *di* in negative publikasi is that the state does not guarantee the existence of legal certainty, on the contrary in the system of positive publications, The state gives a full request to the holder of the right to the registered land against the tuntutan of any party and aanya guarantee of compensation in case of error/ error of procedure, meaning that in the system positive state publications guarantee the existence of legal certainty. In addition to the foregoing, the negara is also responsible for any errors and/or procedures in the issuance of the certificate by providing compensation to the losses incurred to the aggrieved party.

4 Conclusion

Article 19 paragraph (2) C of Law Number 5 of 1960 concerning the Basic Regulations of Agraria Principles, Article 32 of Government Regulation Number 24 of 1997 has not guaranteed fair legal certainty, because in these articles still use a negative publication

system with positive significance. The changes that need to be made are to amend Article 19 paragraph (2) C of Law Number 5 of 1960 concerning the Basic Regulation of Agrarian Principles to use a positive publication system.

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