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"Comparative Law System of Procurement of Goods and Services around Countries in Asia, Australia and Europe"



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PREVENTING LAND MAFIA USING POSITIVE LAND REGISTRY SYSTEM

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ABSTRACT

Registration of land nowadays is in the form of publication from negative toward positive, meaning land certificate as the strongest proof of legal ownership still can be aborted by other parties who could provide stronger legitimate proves of ownership. The main problem is that the data that being used as basic of land registration is out date, never been upgrade and in less orderly administration. The land parcel data is kept and being held secretly by the village head and government official.

This disorder condition is being used by the land mafia and the corrupted official to their advantages. Such conditions are very disadvantages for landowners because there is no legal certainty and justice resulted in land disputes. In many cases, double land certificate occurred. As a final result it is hard for the government to do land acquisitions for country development.

The solution for this problem is by doing a positive land registry system. This system will obtain the real accurate data parcel in the field. To be able to provide an accurate updated data, it is must be done by empower cooperation between governmental village administration, village official and villagers themselves. All plots of land boundary in the village is marked and mapped by shareholders, recorded, verified, announced and later be approved as the real data parcel plotted by villager (*contradiktur delimitation*). All of the process supervised by the government land officials that later can be legalized by the court. This positive land registration system gives strongest complete evidences that cannot be overturned by a judge in the court.

Keywords : Preventing, Land Mafia, Positive Land, Registry System.

A. BACKGROUND

In this globalization era, information technology becomes a significant factor in land registry service. A land register can be done electronically and being called E Land Service. The new land registry system changes the land registry system from negative system toward positive system to give a solid legal certainty of the land. This will prevent any land disputes and endless agrarian conflict resulted in social and economic growth in the future.

Nowadays, land management system in the village administration level is in disorder condition. This situation occurred due to obsolete data and lack of supervision by the government. The land data administration is being held and kept secretly by village head and village secretary and used only for land tax register. This data becomes “grey” and creating land mafia who takes advantages from this situation.

Sediono Tjondronegoro¹ says that “land is a key assets not a commodity for human interest. Land is a basic of life. If there is no land, than there will be no sea, river and life itself. Land is very important in the nation territory as well; therefore a legal certainty in the land registry is a must. Land is a human economic right that is assured by constitution. The economic and Law development should grow together and supporting each other.

Law as a normative nature of the provisions has a role and a very important function in the economy. The existence of law in the community has a role and influence on economic activity in harmony with the function of the law itself. Law in its function provides instructions for human behavior, becomes a toll for resolving conflict and economic tools for social engineering².

This is precisely why the law is necessary in the economic activity. Since economic resources are limited, the demand itself for the economic resources is unlimited. As a result the conflict between fellow citizens to fight over economic resources will often occur.

In the relationship between Human and land, according to Maria Soemardjono³, The main important aspect is a legal certainty regarding to Subject (who is the owner, how can he

¹Sediono Tjondronegoro, dalam Bambang Sulistyio Widjanarko. Manajemen Pertanahan Berbasis Masyarakat (MPBM). LSM Muri Lamtari.Semarang.2012. halaman iii.

² Gunarto Suhardi, Peranan Hukum Dalam Pembangunan Ekonomi, Universitas Atmajaya, Yogyakarta, 2002, hal. 27

³Maria Sumardjono dalam Bambang Sulistyio Widjanarko. Manajemen Pertanahan Berbasis Masyarakat (MPBM). LSM Muri Lamtari.Semarang.2012. halaman vii.

posses the land), The Object (position, how big is the land and land borders), and also the title and the type of the land right itself.

This not orderly administration of land in the village shows the registration of land will not be able to guarantee legal certainty because it has not been able to register plots of land in accordance with the real condition of the field, so the data is hard to be physical and juridical accurate on the certainty of the object and the subject of land rights and relations between the subject and object in the law.

BPN in the service of land registration only relied on letters formal truth as the basis for the right base by checking the collection of physical data (cadastral measurement) and juridical (Committee A / B) which is used as a basis for mapping and bookkeeping plot, with the announcement for 60 days issued Certificate of Land is excerpts from the land books as Regulation no. 24 of 1997 and PMA 1997 no.3.

The unorder administration circumstances of land in the village and lack of training by BPN and the local government to provide a valid data led to many land issues. This never ending land disputes bring disadvantages towards land owner. It is becomes injustice case since the bureaucrats including the law enforcement officer often defend the party with wealthier possession who gives more money rather than the real land owner in the court case scenario. However, this situation is actually a challenge for legal experts in applying the concept of "the law as a means of renewal" as proposed by Mochtar Kusumaatmadja, which began as a concept of "law as a tool of social engineering" of Roscoe Pound. Thus, the law must be created for the benefit of society and not vice versa⁴.

B. PROBLEM FORMULATION

The grey situation is occurred in the land data due to unorganized and obsolete data administration. Therefore, the accurate and update data parcel collection is very important. How empowering rural districts to get accurate physical data and juridical so that the efficiency of the land registration can be realized in maximizing the welfare of the Indonesian people. An accurate data will be obtained good laws in order to provide legal certainty and the "behaviorial law and economy" to "social welfare". The key word is guarantee legal certainty in the ownership of land rights by getting accurate physical and juridical data to avoid intervention by the land mafia.

⁴Adi Sulistiyono dan Muhammad Rustamaji, *Hukum Ekonomi Sebagai Panglima*, Masmadia Buana Pustaka, Sidoarjo, 2009, halaman 101.

C. DISCUSSION

1. Land Registry

According to AP. Parlindungan⁵, Land is part of the earth, above and under. If we reviewed article 1, paragraph 2 of Regulation no.24 / 1997, it is stated that the plot part of the earth's surface which is a unit of limited field, and it becomes the object of registration of land in Indonesia.

In realizing certain rights to the Article 19 UUPA has set the basic conditions for land registration, as follows:

Paragraph (1): In order to ensure legal certainty, the Government held land registration throughout the territory of the Republic of Indonesia, according to the provisions laid down by government regulation.

Paragraph (2): Registration of land referred to in paragraph (1) shall include:

- a. Measurement, mapping and land book making.
- b. Registration of rights to land and transition over land rights.
- c. Award letters proof of ownership and applicable right as evidentiary tool.

To carry out the registration of land shall be stipulated by PP No.10 / 1961, using a Negative land registration by systematically mapping the village after village takes very slow progress, time consuming and big budget.

Later in development, enhanced with PP No.24 / 1997 is based on the principle of land registration is simple, safe, affordable, cutting-edge and open which basically aims to provide legal certainty and legal protection of land rights as well as providing information and organizing orderly land administration.

In chapter 3 of Regulation no.24 / 1997 affirmed that the land registration aims to:

- a. Provide legal certainty and legal protection to the rights paper holders of the land plot;
- b. Provide information to the parties concerned; and
- c. Orderly implementation of land administration.

Therefore PP No.24 / 1997 enhance PP No.10 / 1961 for land registration into the land registry of negative publicity towards the positive with the negative publicity systematic mapping and mapping sporadic and each plot by Field Identification Number (NIB).

⁵AP Parlindungan. Pendaftaran Tanah di Indonesia. Bandung. Penerbit Mandar Maju.2009.Halaman 20.

Throughout the land registration is still negative publicity cannot give 100% certainty of law, legal protection, legal security and justice for both land owners and buyers of land meant well because if there are other parties that provide stronger prove ownership of the land, then land certificate can be canceled after a court decision.

The legal certainty of property rights to land in land registration should decide on considering the factors of substance, according Muchtar Wahid⁶ in his research in South Sulawesi these factors are:

1. Factors certainty of object.
2. Factor certainty the status of the land.
3. Factors certainty of the subject land right

2. Empowering Vilaage Governance in Collection

Strategies to search for the material truth of the data plots in the field, either physical or juridical data is indispensable. The main step is to perform a thorough data collection while improving the village land administration that is disorganized since there is no guidance from the government so far. Data land that is formerly used for local paugeran as a former royal village and the C books for tax purposes, needs to be reorganized to empower the community as a "stakeholder" land. The data obtained and published and corrected by the respective owners of the land, made mapping and recorded and validated in the village consultation meetings were subsequently formalized in the form of Village Regulations⁷.

Community empowerment begins by installing boundary markers respective areas of land as bulk certification program by establishing Pokmasdartibnah (Society Literacy Land Code) in the era of the Minister of Agrarian Soni Harsono 1995. The landmark stakes will be verified by the Verification and Mediation Team comprising by 5 village elder who understand the history of the land. The land data than mapped and recorded field by 4 people as a village Youngster who appointed as Tim Collectors and Data Manager. All the Personnel are selected by the community through village consultation meetings and given a decree by the chief. The team is given task to help the village head in curbing land administration by recording and administering legal actions and events of the law relating to land in the form of data acquisition, possession, use, utilization and assessment of land (P5T) plot.

⁶Muchtar Wahid. *Memaknai Kepastian Hukum Hak Milik Atas Tanah*, Jakarta, Penerbit Republika. 2008. Halaman 126-136.

⁷Bambang Sulisty Widjanarko. *Manajemen Pertanahan Berbasis Masyarakat (MPBM), Multiguna-Mempercepat Kemandirian Bangsa*. Semarang. LSM Makmur Mandiri Alam Lestari. 2012. Halaman 114-116.

The results of the data collection was announced, verified by the team and individual land owners, if the land has been approved limit kontradiktur delemitasi then signed as a boundary to the minutes of delimitation of land. The entire results of data collection and physical data collection juridical began with UUPA 1960 administered in Book A in the form of a history of the land, Book B is a form of mapping of the land parcels with the identity number field (nobid), Books C contains mutation soil and land problems and guide and the Book D contains Spatial , Land Use, Building Management and Land Use Water used as material meeting village consultation meetings as the right base that will be formalized as the Village Regulations. The activity is called Community-Based Land Management (MPBM) and has been tested in 2006 by BPN Regional Office of Central Java province in 35 villages / wards in 35 districts / cities in Central Java⁸.

MPBM is the management unit of land administration in rural / village which is the revitalization of village autonomy (Indigenous Governance system), with participatory approaches and self-help in order to realize the welfare of the people with justice by applying Chess Land Code in the framework of NKRI. Chess orderly land cover administrative order, rule of law, the orderly use of land, orderly maintenance of the land and the environment.

MPBM is the key strategy in support of the campaign for agrarian reform program. MPBM is a participatory approaches and bottom up so that the independence of the autonomous villages / wards will be in line with the ideals of the nation towards Adil Makmur society based on Pancasila and the 1945 Constitution naturally be emerged. Characteristics MPBM is consensus with village consultation meetings, the participation of society, mutual assistance, self-cost of a simple and versatile in accordance with the values of Pancasila. In the execution of daily tasks, the Group of Governmental MPBM office environment Village Head Office / Sub in order to facilitate communication and coordination with the Irish Government / District Village as a partner-work and the technical guidance, supervision and reporting Data Control, Ownership, Use, Utilization and Soil Assessment (P5T) of BPN Officer.

According Enemark 2006⁹, on Understanding Land Management Paradigm Need for Establishing suistanable National Concepts, suistanable Development can only come from

⁸.Laporan Final Uji Coba Manajemen Pertanahan Berbasis Masyarakat (MPBM), Rekomendasi, Saran dan Masukan bagi Efektifitas Penduplikasiannya.2007. Kanwil BPN Provinsi Jawa Tengah.

7. Enemark, S, 2006. Understanding The Land Management Paradigm Need For Establishing Sustainable National Concepts. The Global Magazine Frr Geomatics. January 2006 Volume 20 dalam Bambang Sulisty Widjanarko. Manajemen Pertanahan Berbasis Masyarakat (MPBM), Multiguna-Mempercepat Kemandirian Bangsa. Semarang. LSM Makmur Mandiri Alam Lestari. 2012. Halaman 164.

the Land Administration Function not only for their Land Policy but it depends on the existence of a data infrastructure to the plot and managed in the system of the lower governmental administration which means must public participation as stakeholders is a must.

After a strong foundation in the right direction in the next 5 to 10 years new land program can be measured by whether how close the program with the UUPA. In 5 to 10 years, building MPBM will not interfere with the development of the land, but if there is no breakthrough in orderly realization of land to the people then in the next 5 to 10 years of development results will have not led to UUPA goals. If MPBM finished with 5 to 10 years than the new direction of development land has the same direction as UUPA. The Data plot store and built, people's consciousness will be awakened. Within the time, the new land administration is capable as the main support of Poleksosbudkumhankam Homeland development.

This model has been carried out in Central Java in supporting the Revitalization of Agriculture, Fisheries and Forestry (RPPK) securing the fields sustainable in 2006 by the Management of Land-Based Society (MPBM) conducted trials in 35 villages in 35 districts as well as to assess areas of land that have been or not bersertipikat ground with ABT 2006 State Budget BPN.

The results of these trials showed that from 76 747 plot, there are 45 582 (59.93%) plot that has has certificated and published until 2005 and turn out that 32 496 (40.07%) plot yet has land certificate. It turns out that from 45 582 land parcels that already has certificate, only 24,995 (54.84%) were included in the Book A (data history of the land / juridical) and B (map fields / physical data) meaning that already exists in the map plotting at BPN and there are 18 126 (45.16%) are not yet in plotting in BPN. This result indicates that the land plot is unclear, it might has a double certificate and a bcome a potential cause of land disputes. In anticipation of the situation, the BPN was carried out a Single Village Map(one folder policy) and GEO KKP (Computerized Land Office). All plot are plotted in the map and entered into a computer.

MPBM activities supported by the provincial government of Central Java. The duplication fo the program at village / other villages using the Governor of Central Java SE no. 593/06844 of 26 April 2006 on the Implementation of Follow-Up Data Collection Rice Land Security and Governor of Central Java SE 593/23 571 of 28 December 2007 on Community-Based Land Management (MPBM) to Regents / Mayors in Central Java¹⁰.

¹⁰Payung Hukum Pembangunan MPBM di Jawa Tengah.2007.Kanwil BPN Provinsi Jawa Tengah.

The data collection result from the community empowerment is made as the right base in the land registration by BPN, because the physical and juridical data has been based on the material truth, the truth will be guaranteed certain rights to ownership of land so that people are protected by law. There is legal certainty, protection of the law so that the state will have evidence to grant legal guarantees to 'back up' the land insurance.

In the Torren positive system¹¹, full size broad field should be definite. It cannot be justified by using plus and minus symbols on the writing of comprehensive sizing plot. For the location of the point peg and connecting lines must be placed on the coordinate certainty, by avoiding the possible shape of the curve, thus it should be in a straight line. This is to prevent boundary disputes, because the location of boundary markers uncertain and forms the connecting lines are not straight, so the direct impact on the amount of area the size of areas of land. Similarly, it's an exact nature of the Torren system, embodied in the form of dispute resolution over the validity of the registration. If there is a refutation of the parties claiming to be the actual owner of the land and justified by a judge, the right of ownership and the land remains the property of the registered owner, while the buffer is warranted rights given proper compensation by the State. So the state is really fully responsible for the security of the property of the registered owner, either in law or in fact the owner for losses (the truth owner), which is caused by an error State official land register on behalf of another person who is not the rightful owner. Similarly, the positive nature of the registration rights Torren who hold to the teaching principle "unassailable right" (Indefeasible title).

Registration of land rights in Indonesia should be in positive system. The nature of land registration is simply to affirm the right of ownership in the form of evidence of rights in the form of "certificates of property rights" to the real owners. State officials who measures the parcels of land, determines the peg position and drawing the shape of the connecting lines between the boundary markers, have to do the job thoroughly, carefully and cautiously in order to achieve the level of accuracy. There should not be no doubts about the amount of extensive areas of land.

In the era of globalization in order to interact with other nations, required legal certainty in the investment for investors, while protecting the Indonesian citizen wealth.

¹¹Peter Butt, Land Law, Sedney : The Law Book Company Limited,1988. halaman 495-496 dalam Herman Soesangobeng. Filosofi, Asas, Ajaran, Teori Hukum Pertanahan Dan Agraria. Yogyakarta.STPN Press.2012 halaman 246.

E lands services will eliminate land mafias, land speculators and anticipate disputes of land and agrarian conflicts. Legal certainty, legal security and legal protection insurance in the form of Land plots of land in the village / villages can be given by village that already perform well MPBM. Traffic of land transactions, legal actions and legal events recorded in an orderly manner in the villages / wards daily. The land becomes the "key asset" for life and the life of the nation and the state so the impact on public order, order administration and development as well as the clarity of boundaries sovereignty of the nation and the state of the Republic of Indonesia.

If the venue for economic activity has legal certainty in land registration stelsel positive then the investment will continue to flow, all the other infrastructure is available in the form of roads, railway, ports, airports for ease of transport and communications as well as ease of licensing so that the economic development will thrive and result of economic efficiency.

D. CONCLUSION.

Indonesia must immediately do a plot data inventory control of ownership, use, utilization and assessment of land (P5T) trough empowering village government by using MPBM simultaneous / staged throughout the NKRI. MPBM pattern is a tool to do a performance control of apparatus of bureaucrats in obtaining physical and juridical accurate data. The data contain of the material truth that can be implemented in the positive registration system and supported by the insurance land. The data result should be inputted by the government IT service and to be use as a valid basic data. With the valid and strong data parcel, government can provide the good governance and cannot be intervene by the land mafia by any circumstances. Legal certainty within the positive land registration stelsel, impacts on preventing the movement of the land mafia, increasing economic efficiency, social, political, and goverment security which resulted in emerging welfare of the Indonesian people.

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