



## The law enforcement of land registration system and procedures for the issuance of land rights certificates in Indonesia

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### Abstract

The objectives of this study are: 1) to determine the efforts made by the government on law enforcement in the implementation of the land registration system and the procedure of issuing certificates of land rights in Indonesia, 2) to determine the legal responsibilities of the Head of the Agrarian Affairs and Spatial Planning/Head of the National Land Agency regarding double certificates issued in the implementation of land registration, and 3) to determine the function and usefulness of the Global Positioning System (GPS) in the implementation of land registration in its relevance to law enforcement in the land sector in Indonesia. The research method used is a normative juridical legal research method that refers to legal norms. The legal materials used are primary binding legal materials that consist of *Undang-Undang Nomor 5 Tahun 1960* (Act Number 5 of 1960), *Peraturan Pemerintah Nomor 24 Tahun 1997* (Government Regulation Number 24 of 1997) and *Peraturan Menteri Agraria dan Tata Ruang/Kepala Badan Pertahanan Nasional Nomor 12 Tahun 2017* (Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation Number 12 of 2017) concerning the Acceleration of Complete Systematic Land Registration (CSLR) and other regulations relating to land issues. Secondary legal materials are taken from various books on agrarian affairs, seminar results, scientific works, research results, and journals. Data is analyzed using logical thinking in deduction and induction. Act Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (Basic Agrarian Law), Government Regulation Number 10 of 1961 and Government Regulation Number 24 of 1997 both of which regulate Land Registration and Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation Number 12 of 2017 concerning the Acceleration of Complete Systematic Land Registration (CSLR) and other regulations are a manifestation of the government's efforts in the field of development in regulating and handling land issues. These laws and government regulations are made in the context of law enforcement in the land sector. One form of improvement in Government Regulation Number 24 of 1997, namely in terms of accelerating the measuring and mapping of land plots that must be registered it is possible to use modern technology, such as the Global Positioning System (GPS) and computerized processing and storage of data. One of the functions and uses of the Global Positioning System (GPS) is for geographic information systems, such as for map making, measuring border distances, or can be used as reference measurements for an area. That is, by using the Global Positioning System (GPS) in measuring a plot of land the coordinates of said plot will be easily determined which will ultimately minimize the occurrence of land disputes.

**Keywords:** law enforcement, legal certainty, global positioning systems (GPS)

### 1. Introduction

In the area of development and agrarian law reform, the *Majelis Permusyawaratan Rakyat* (People's Consultative Assembly) has issued the Decree of the People's Consultative Assembly of the Republic of Indonesia Number IX/MPR/2001 concerning the Renewal of Agrarian Law and the Management of Natural Resources which marks the starting point of the agrarian law reform. In Article 2 it states that: "Agrarian reform includes a continuous process of restructuring tenure, ownership, use and utilization of agrarian resources, carried out in the framework of achieving legal certainty and protection as well as justice and prosperity for all Indonesian people."

There are several very important elements of the provisions of Article 2, namely <sup>[1]</sup>. The first is a continuous process, namely the existence of policies that have been consistently

and continuously implemented. Policy changed that are carried out often will cause legal uncertainty. Second, processes are in the form of restructuring tenure, ownership, use and utilization of agrarian resources. The word restructuring is generally intended as a change in the structure of relations between humans with regard to natural resources. Third, the underlying value is the certainty and legal protection, justice and prosperity for all Indonesian people.

One direction for reforming Indonesian legal politics in the current reform era is as formulated in the Decree of the People's Consultative Assembly of the Republic of Indonesia Number IV/MPR/1999 in Chapter IV of *Garis-Garis Besar Haluan Negara* (Outlines of State Policy); it talks about how Policy Direction in the Field of Law is to consistently enforce the law to ensure legal certainty, justice

<sup>1</sup> Achmad Sodiki dan Yanis Maladi, *Politik Hukum Agraria*, (Yogyakarta: Mahkota Kata, 2009), p. 10.

and truth, the rule of law as well as respect for human rights [2].

Legal development is carried out through the renewal of legal material while noting the plurality of applicable orders and the influence of globalization as an effort to improve legal certainty and protection, law enforcement and human rights, legal awareness and legal services that are based on justice and truth, order and prosperity in the context of implementing a country that is increasingly orderly, organized, smooth and globally competitive [3].

Land registration is one of the processes to obtain legal certainty for rights to land ownership. In Article 19 Paragraph 1 of Act Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, or better known as the Basic Agrarian Law (*Undang-Undang Pokok Agraria / UUPA*) [4], it is emphasized that in order to ensure legal certainty by the government, land registration is carried out throughout the Republic of Indonesia in accordance with the provisions regulated by *Peraturan Pemerintah* (the Government Regulations). In Article 3 Letter (a) of Government Regulation Number 24 of 1997 concerning Land Registration, it is stated that one of the objectives of land registration is to provide legal certainty and legal protection to the holders of the rights to a plot of land, apartment units and other rights that have been registered so that they may easily prove themselves to be the rightful owner. Article 4 Paragraph (1) of Government Regulation Number 24 of 1997 states that in order to provide legal certainty and legal protection as referred to in Article 3 Letter (a) for the holder of the land rights in question, a certificate of land rights is given.

The administration/giving/provision of legal certainty regarding land rights for all Indonesian people, which is one of the objectives of the enactment of the Basic Agrarian Law, can be realized through two efforts, namely [5].

1. Availability of written, complete/comprehensive, and clear/evident legal instruments that are implemented in accordance with its spirit and provisions.
2. Implementation of land registration that allows the holders to easily prove that they are the rightful owners of the land, and for the concerned parties, such as prospective buyers and prospective creditors, to obtain the necessary information regarding the land that is the object of legal action that is to be carried out, and for the Government to implement the land policies.

It should be noted that one form of improvement of Government Regulation Number 24 of 1997 is in the terms of accelerating the measurement and mapping of land plots that must be registered it is possible to use modern technology, such as Global Positioning Systems (GPS) as well as computerized processing and data storage. This matter has also been stated and reaffirmed in Chapter 1 General Provisions in Article 1 Number (15) of Minister of

Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation Number 12 of 2017 [6]. Computerization of Land Activities, hereinafter abbreviated as CLA, is the main application in supporting the implementation of authority, duties and functions the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency based on information and communication technology that is built and developed in accordance with the flow, requirements, time, cost and authority that is in accordance with the provisions of the legislation.

## 2. Framework

### 2.1 The Positive Impact of Government Regulation Number 24 of 1997 concerning Land Registration

With the enactment of Government Regulation Number 24 of 1997, it is certainly expected to have a positive impact on both the community and the government itself. There are several benefits that will be obtained by renewing the land registration system through Government Regulation Number 24 of 1997, namely:

#### a) For the community

1. The new system will create a sense of security for the rightful owners of the land rights, because they avoid the fear of being sued.
2. It helps make it easier for the community to obtain property rights on land, because the procedure for obtaining land rights is no longer rigid especially for the evidence provision.
3. The economy of the community becomes more advanced; this is possible, because in reality the certificate can be used as collateral for money loans at the bank.
4. It simplifies the transfer of rights; With the certificate, it will be easier to transfer land rights, because one may simply present a certificate to the National Land Agency along with other terms and conditions.
5. Increases land prices; Land that has been registered will have a certificate, lands with certificates will usually have a higher selling value rather than lands without certificates.
6. It is easier for communities to obtain data about land because it is possible to use sophisticated tools.

#### b) Benefits for the government

1. The ease with which the community registers its land will cause more requests from the community to register land rights.
2. Reduces anxiety due to land disputes.
3. Makes it easier to establish policies in the land sector because land administration is more orderly.
4. Profitable for banking institutions; Banking institutions often provide credit to the community by using land as collateral.
5. Facilitates the government in determining policies in other fields such as taxation because it is easier for tax collecting.

<sup>2</sup> Arba, *Hukum Tata Ruang dan Tata Guna Tanah: Prinsip-prinsip Hukum Perencanaan Penataan Ruang dan Penatagunaan Tanah*, (Jakarta: Sinar Grafika, 2017), p. 1.

<sup>3</sup> *Ibid.*, p. 5-6.

<sup>4</sup> Pasal 19 UU Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-pokok Agraria atau yang lebih dikenal dengan Undang-Undang Pokok Agraria (UUPA) (Article 19 of Act Number 5 of 1960 concerning Basic Regulations on Agrarian Principles. Better known as the Basic Agrarian Law).

<sup>5</sup> Urip Santoso, *Pendaftaran dan Peralihan Hak Atas Tanah*, (Jakarta: Prenada Media Group, 2010), p. 2.

<sup>6</sup> Peraturan Menteri Agraria dan Tata Ruang/Kepala Badan Pertanahan Nasional RI Nomor 12 Tahun 2017 tentang Percepatan Pendaftaran Tanah Sistematis Lengkap (Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation Number 12 of 2017 concerning the Acceleration of Complete Systematic Land Registration).

Such are some of the benefits that may be noticed, both by the government as well as the community, with the renewal of the land registration system through Government Regulation Number 24 of 1997.

## **2.2 The Positive Impact of Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation Number 12 of 2017 concerning the Acceleration of Complete Systematic Land Registration (CSLR)**

In considering the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation Number 12 of 2017 concerning the Acceleration of Complete Systematic Land Registration (CSLR) in the “considering” section it is stated that in order to provide legal certainty and legal protection for community land rights fairly and evenly, as well as encouraging the country’s economic growth in general and the people’s economy in particular, it is necessary to accelerate complete/comprehensive land registration in the entirety of the Republic of Indonesia as mandated in Article 19 of Act Number 5 of 1960 concerning Basic Agrarian Principles.

In Article 1 Number (2) the meaning of Complete Systematic Land Registration, hereinafter abbreviated as CSLR, is the activity of land registration simultaneously carried out for the first time for all objects of Land Registration in the entirety of the Republic of Indonesia in one village/*kelurahan* or other name, with that which includes the collection and determination of the truth of physical data and juridical data regarding one or several objects of Land Registration for the purpose of the registration itself.

The scope and the purpose of this Ministerial Regulation is as stated in Article 2 Paragraph (1) and Paragraph (2), namely as follows<sup>[7]</sup>.

1. The scope of this Ministerial Regulation is the acceleration of the implementation of the CSLR program which is carried out per village/*kelurahan* in the cities/regencies, including urban areas, covering all plots of land in the entirety of the Republic of Indonesia.
2. The purpose of the CSLR program is to accelerate the provision of legal certainty and legal protection of community land rights in a definite, simple, fast, smooth, safe, fair, equitable as well as open and accountable manner, in order to improve the welfare and prosperity of the country’s economy as well as reduce and prevent land disputes and conflicts.

## **2.3 The Strength of Proof of Land Rights Certificates**

The definition of certificate in Article 1 Number 20 of Government Regulation Number 24 of 1997 states that a certificate is a letter of proof of rights as referred to in Article 19 Paragraph (2) Letter c of the Basic Agrarian Law for land rights, management rights, waqf land, ownership rights to apartment units and mortgage rights, each of which has been recorded in the relevant land book. One of the objectives of land registration as stipulated in Article 3 Paragraph (1) of Government Regulation Number 24 of

1997 is to provide legal certainty and legal protection to holders of rights to a plot of land, apartment units and other registered rights in order to easily prove oneself as the rightful owner. To provide legal certainty and legal protection, the rightful owners are granted certificates of land rights. Whereas the definition of certificate in Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation Number 12 of 2017 concerning the Acceleration of Complete Systematic Land Registration (CSLR) states that: “Certificate of land rights is a letter of proof of rights as referred to in Article 19 Paragraph (2) letter c of Act Number 5 of 1960 concerning Basic Regulations on Agrarian Principles for land rights, management rights, waqf land, each of which has already been recorded in the relevant land book.

Legal certainty regarding land rights as envisioned by Basic Agrarian Law includes three things, namely: 1. Certainty regarding the object of land rights; 2. Certainty regarding the subject matter of land rights, and; 3. Certainty regarding the status of land rights<sup>[8]</sup>. Specifically regarding the certainty of the object of land rights, technically this requires the “unique” nature of each land plot concerned. This uniqueness spares a variety of land disputes that originate from boundary disputes and the location of land plots. Therefore, certainty regarding this object must be able to clearly show the boundaries, extent and location of the plot of land to all parties concerned.

Article 19 Paragraph (2) letter c of Act Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (Basic Agrarian Law) states that the end of land registration activities held by the government is the provision of proof of rights documents, which are strong, valid proof. Basic Agrarian Law does not mention the name of the proof of land rights that is registered<sup>[9]</sup>. The provisions of Article 32 Paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration is an elaboration of the provisions of Article 19 Paragraph (2) Letter c, Article 23 Paragraph (2), Article 32 Paragraph (2), and Article 38 Paragraph (2) of Act Number 5 of 1960 concerning Basic Regulations on Agrarian Principles or commonly referred to as Basic Agrarian Law, which states that land registration results in a form of a valid proof of letter is a strong tool of evidence.

Based on the provisions of Article 32 Paragraph (1) of Government Regulation Number 24 of 1997, the adopted system of publication of land registration is a negative publicity system, namely that certificates are the only strong proof of rights and are not absolute proof of rights<sup>[10]</sup>. This means that the physical data and juridical data listed in the certificate have legal force and must be accepted by the judge as correct information for as long as there is no other evidence that proves otherwise. Therefore, it is the court that has the authority to decide which evidence is correct/true and if it is proven that the certificate is not correct/true, then the changes and corrections are carried out.

The provisions of Article 32 Paragraph (1) of Government Regulation Number 24 of 1997 have weaknesses, namely that the state does not guarantee the physical correctness and juridical data presented and there is no guarantee for the owner of a certificate because at any time another party that

<sup>7</sup> Peraturan Menteri Agraria dan Tata Ruang/Kepala Badan Pertanahan Nasional Nomor 12 Tahun 2017 tentang percepatan Pendaftaran Tanah Sistematis Lengkap (Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation Number 12 of 2017 concerning the Acceleration of Complete Systematic Land Registration).

<sup>8</sup> Muchsin, *et al.*, *Hukum Agraria Indonesia Dalam Perspektif Sejarah*, (Print II; Bandung: PT Refika Aditama, 2010), p. xi.

<sup>9</sup> Urip Santoso, *Op. Cit.*, p. 42.

<sup>10</sup> Urip Santoso, *Op. Cit.*, p. 45.

feels disadvantaged may dispute said certificate <sup>[11]</sup>.

In order to cover up weaknesses in the provisions of Article 32 Paragraph (1) of Government Regulation Number 24 of 1997 and to provide legal protection to the owners of the certificates from the claims of other parties and in order to make it a certificate that is considered as strong proof, the provisions of Article 32 Paragraph (2) of Government Regulation Number 24 of 1997 were made. Certificates as proof of rights are strong if they meet the following cumulative elements:

- a. Legally issued certificate on behalf of a person or legal entity;
- b. The land was acquired in good faith;
- c. The land is controlled in real terms;
- d. Within 5 (five) years since the issuance of the certificate no one has filed an objection in writing to the holder of the certificate and the Head of the local Regency/City Land Office or did not file a lawsuit in court regarding the land acquisition or issuance of the certificate <sup>[12]</sup>.

## 2.4 Law Enforcement Theory

The term *penegakan hukum* is often used to translate the term law enforcement which is a series of efforts, processes, and activities to make the law apply as it should. In the *Kamus Umum Bahasa Indonesia* (General Indonesian Dictionary) <sup>[13]</sup>, *penegakan* (enforcement) is derived from the base word “*tegak* (upright)”, which means: stand up, straight upward, in a figurative sense remain firm, remain unchanged, alone, as tall as a person stands. While *penegakan* (enforcement) itself means the act (things and so on) of enforcing.

According to Soekanto, as quoted by Soerjono <sup>[14]</sup>, the core of law enforcement is the harmonious relationship between the values outlined in solid rules and tangible behavior as a series of final stages of the translation of values to create, maintain and preserve the peace of life.

Suharto, as quoted by R. Abdussalam <sup>[15]</sup>, said that law enforcement is a series of activities carried out by law enforcement officials in both preventative and prosecutive actions in implementing applicable legal provisions in order to create a safe, peaceful and orderly situation for legal certainty in society.

Based on the descriptions above, it can be said that law enforcement is a series of activities, efforts and actions through the organization of various instruments to realize what the law drafters aspire to do. In addition, it can be said that law enforcement is not an effort that is completely separate from the legal process itself. Law enforcement must also be related to the basic ideals of establishing a series of provisions in the field of eradication and prevention of criminal acts of corruption and the formulation of these legal ideals in broad and numerous legal norms. Law enforcement is not only interpreted as an act of forcing people or parties who do not comply with the applicable provisions to comply with these regulations, where this is more repressive. Law enforcement can also be

interpreted as a possibility to influence people or various parties related to the implementation of legal provisions, so that the law can apply as it is and as it should be. If the latter meaning is included as part of the understanding of law enforcement, then socialization, counseling, and legal education for the community should be inseparable from law enforcement in a broad sense.

In relation to the issue of law enforcement, J.B.J.M. Ten Berge describes administrative law enforcement instruments, which include <sup>[16]</sup>. a. Supervision and b. Application of sanctions.

Law enforcement is an attempt to realize ideas of justice, legal certainty and social benefits. Hence, law enforcement is essentially the process of manifesting ideas. Law enforcement is the process of carrying out efforts in order to uphold or help legal norms function in a tangible manner as a guideline for perpetrators in traffic or legal relations in public and state life. Law enforcement is an effort to realize legal ideas and concepts that people expect to become a reality. Law enforcement is a process that involves many things/matters <sup>[17]</sup>.

In law enforcement, government administration does not only pay attention to legal certainty in the form of normative regulations but also to the humanitarian aspects (justice). Law enforcement is always pleasing to human life because law enforcement is derived from the rule of law created through a process of interaction between humans in their social interactions/associations. However, as soon as the law is formed, it regulates and directs human behavior in social life. It is therefore not surprising that the whole thought and discussion of law must always begin and lead to aspects of human life that continue to grow and develop in various aspects, therefore law enforcement must also change and develop continuously in a positive manner that is in line with the development of culture and civilization which directly relate to the whole system of means to implement the law and its enforcement mechanism <sup>[18]</sup>.

## 2.5 Theory of Legal Certainty

Republic of Indonesia's Constitution of 1945 states that: Every person has the right to recognition, guarantee, protection, and legal certainty that is fair as well as equal treatment before the law <sup>[19]</sup>. Charles Himawan stated: These regulations are sometimes so numerous that they cause obscurity in the applicable laws. If the authoritative law means that the law that is obeyed by the people, both the person who made the law and the person against whom the law was intended, the connection between humans and the law can be seen here. The need for authoritative law to support development can also be felt. The need for legal certainty is observed in different contexts <sup>[20]</sup>.

There is one interesting thing from the view expressed by the legal scientists/scholars above, namely the need for

<sup>11</sup> Ibid.

<sup>12</sup> Ibid. See also Boedi Harsono, Op. Cit., p. 536.

<sup>13</sup> WJS Poerwadarminta, Kamus Umum Bahasa Indonesia, (Balai Pustaka, 1976), p. 1031.

<sup>14</sup> Soerjono Soekanto, Faktor-Faktor Yang Mempengaruhi Penegakan Hukum, (Jakarta: Rajawali, 1986), p. 3.

<sup>15</sup> R. Abdussalam, Penegakan Hukum Di Lapangan Oleh Polri, (Gagas Mitracatur Gemilang, 1997), hlm. 18.

<sup>16</sup> J.B.J.M. Ten Berge dalam Philipus M. Hadjon, Penegakan Hukum Administrasi dalam Pengelolaan Lingkungan Hidup, Aspek-Aspek Hukum Administrasi dari KTUN Izin, Fakultas Hukum Universitas Airlangga, Surabaya, 1995, p. 1.

<sup>17</sup> Shant Dellyana, Konsep Penegakan Hukum, (Yogyakarta: Liberty, 1988), p. 32.

<sup>18</sup> Ridwan HR, Hukum Administrasi Negara, (Cet. XI; Yogyakarta: PT Rajagrafindo Persada, 2014), p. 291-294.

<sup>19</sup> Article 28D Paragraph (1) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (the Republic of Indonesia's 1945 Constitution).

<sup>20</sup> Charles Himawan, Hukum, Sebagai Panglima, (Cet. I; Jakarta: Buku Kompas, 2003), p. 113/155.

authoritative law. In other words, the authority of the law becomes a legal indicator to be obeyed. It seems that this cannot be separated from the purpose of establishing the law itself. This indeed cannot be separated from the background of thought underlying the birth of a legal norm. In addition, the time and place of the validity of the law are also quite influential.

The purpose of the formation of the law can be defined in various perspectives. In this regard, it is worth noting the opinion expressed by O. Notohamidjojo concerning the purpose of the law, namely: "To protect human rights and obligations in society, to protect institutions in the community (in a broad sense, which includes social institutions in the political, social, economic and cultural fields), on the basis of justice, to achieve balance and peace and general welfare (*bonum commune*)"<sup>[21]</sup>.

According to O. Notohamidjojo, there are three legal objectives that need to be mutually harmonious, namely justice, usability, and legal certainty<sup>[22]</sup>. It should be stated here that in the Legal literature itself, there are various theories about the purpose of law, including the Ethical Theory, which emphasizes justice. The Utility Theory, which emphasizes the benefit or usefulness.

### 3. Research Methodology

#### 3.1 Research Type

In this study, the type of data used is qualitative, namely data on the implementation of land registration. Qualitative research emphasizes the pattern of giving an objective description of the actual situation, related to the object of research and based on data that appears in the form of words and not numbers<sup>[23]</sup>.

This type of research can be classified into the category of library research with the type of data that is qualitative and descriptive.

#### 3.2 Data Source

In relation to data sources, Salim and Nurbani state that the data source is where data is obtained. Data sourced are classified into two types, which include:

- Primary data sources, and
- Secondary data sources.

The source of primary data is data obtained directly from the community to be studied. The primary data source is also called basic data or empirical data. Secondary data sourced are data obtained from library materials or literature that is related with the object of research. In normative legal research, the main data source comes from library literature<sup>[24]</sup>.

#### 3.3 Research Approach

This study uses an empirical juridical approach or is also referred to as the norm or rule of law approach. Rony Hadityo Soemitro stated: "In order to be able to complete a scientific study, an appropriate approach method is needed in accordance with the formulation of the predetermined

problem. The method of approach chosen in this study is to use an empirical juridical approach<sup>[25]</sup>.

## 4. Discussion

### 4.1 Law Enforcement in the Implementation of the Land Registration System and Procedure for the Issuance of Certificates of Land Rights in Indonesia

The efforts of law enforcement carried out by the legislature are to make *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945* (the Republic of Indonesia's 1945 Constitution) and the basis of *Negara Pancasila* (the Pancasila State) as the basic reference for the construction/making of agrarian law. That means, the fundamental values of *Negara Pancasila* (the Pancasila State) and *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945* (the Republic of Indonesia's 1945 Constitution), such as moral, welfare, justice, equality, and enforcement of human rights must be accommodated in the following statutory regulations and implementing regulations below them. In addition, the legislature also oversees the implementation of laws by the executive and judicial institutions<sup>[26]</sup>.

Law enforcement and human rights by executive institutions are manifested in the implementation of statutory provisions in two ways. First, through making regulations for implementing laws, such as *Peraturan Pemerintah* (Government Regulations), *Peraturan Presiden* (Presidential Regulations), *Keputusan Presiden* (Presidential Decrees), *Peraturan Menteri* (Ministerial Regulations). Second, through the execution of various implementing regulations in the field. Above all, executive institutions must work based on substantial values and do not stop at legal procedures or etiquette. The fundamental values in question are the values contained in the philosophy of *Negara Pancasila* (the Pancasila State) and *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945* (the Republic of Indonesia's 1945 Constitution), such as justice, welfare, democracy and human rights. Thus, various regulations for implementing laws made by the government are not authoritarian and repressive, but must be implemented, realistic, and contain values of justice.

The judiciary establishes law and human rights from the process of investigation, inquiry, through to court decisions. Thus, the judicial institutions that are obliged to uphold the law and human rights are the police, prosecutors and judges. For the sake of the effectiveness of law enforcement and human rights, law enforcers must prepare legal instruments, both construction and legal interpretations. In interpretation, what is used is not merely the logic of regulation, but also the reality that exists in society<sup>[27]</sup>.

The practice in the field shows that law enforcement has not been fully implemented by the judiciary/judicial institution. This can be seen in a complicated, time-consuming, and expensive process in resolving agrarian disputes or conflicts. Ideally, agrarian justice is all under the same roof so that the judicial process becomes effective, fast, easy, and inexpensive. However, thus far, there has been no special agrarian court.

In principle, law enforcement in the agrarian sector needs to

<sup>21</sup> O. Notohamidjojo. *Makna Negara Hukum*, (Jakarta: BPK, 1970), p. 80-82.

<sup>22</sup> O. Notohamidjojo, *Soal-Soal Pokok Filsafat Hukum*, (Jakarta: BPK, 1975), p. 44.

<sup>23</sup> M. Nasir, *Metode Penelitian*, (Jakarta: Ghalia Indonesia, 1983), p. 63.

<sup>24</sup> Salim HS dan Elies Septiana Nurbani, *Penerapan Teori Hukum pada Penelitian Tesis dan Disertasi*, Jakarta: Rajawali Pers, 2013, p. 15-16.

<sup>25</sup> Rony Hanityo Soemitro, *Metodologi Penelitian Hukum dan Jurimetri*, (Print V; 1998), p. 12.

<sup>26</sup> Bernhard Limbong, *Hukum Agraria Nasional*, (Jakarta: Margaretha Pustaka, 2012), p. 423.

<sup>27</sup> *Ibid.*, p. 424.

be carried out comprehensively, especially in realizing law enforcement in cases related to agrarian resources. There are three factors that influence law enforcement in the agrarian sector, namely coordination factors between sectoral, law enforcement capacity, and corruption factors<sup>[28]</sup>.

One urgent matter is to immediately establish a 'one roof' agrarian law institution so that the handling of criminal, civil, and state administrative cases related to agrarian affairs can be more effective, efficient, inexpensive, and accurate. The 'one roof' legal institution is also important in order to answer the classic question concerning the differences in the interpretation of legal norms. Thus, the judges can equate perceptions of handling cases in the fields of natural resources and the environment.

In connection with the enforcement of agrarian law, the implementation of the current land registration system requires serious and continuous efforts to make improvements and monitor its implementation. In the implementation of land registration, a system of checks and rechecks on the correctness of data and supporting documents is absolutely necessary, this needs to be done considering that cases in the land sector that still appear, indicate that there are still gaps in the management of good land administration that is intentional or accidental.

In order to realize legal certainty in land registration, law enforcement is needed. According to J.B.J.M. Ten Berge, "the task of law enforcement is not only placed on the shoulders of the police. Law enforcement is the duty of all legal subjects in society. However, in relation to public law, the government is the one most responsible for law enforcement. J.B.J.M. Ten Berge mentions several aspects that must be noted or considered in law enforcement, namely:

- a. A regulation must allow little space for differences in interpretation;
- b. Conditions for exceptions must be limited to a minimum;
- c. Regulations must be directed as much as possible to a reality that can be objectively determined;
- d. Regulations must be enforced by those affected by said regulation and those burdened with (legal) enforcement.

In order to prevent double certificates, law enforcement officials, in this case *Dewan Perwakilan Rakyat* (House of Representatives) officials must be monitored so as not to commit administrative violations. Law enforcement apparatus includes an understanding of law enforcement institutions and law enforcement officials in a narrow sense, law enforcement officials involved in enforcing the law, starting with the police, legal counsel, prosecutors, judges and prison guards. In the process of the working of the law enforcement apparatus, there are 3 (three) important elements that are influential, namely:

- a. Law enforcement institutions along with various supporting facilities and infrastructure and institutional work mechanisms;
- b. Work culture related to its apparatus, including regards to the welfare of its officers/officials, and
- c. A set of regulations that support both institutional performance and those regulating legal material that are used as work standards, both in terms of their material law and procedural law. Systematic law enforcement

efforts must pay attention to these three aspects simultaneously, so that the process of law enforcement and justice itself can be manifested internally.

Furthermore, Ten Berge stated that the instruments of state administration law enforcement include the supervision and the enforcement of sanctions. Supervision is a preventative step to enforce compliance, while the application of sanctions is a repressive step to impose compliance in a legal state. Supervision of government actions is intended so that the government carried out its activities in accordance with legal norms, and also gives the people assurance from the government's actions as a consequence of the government's concept of the welfare state government is very broad interference in the peoples' lives such as politics, religion, social, cultural, and so on, it is necessary to protect the interest of the people that are implemented in the form of supervision of government activities.

To realize/actualize this, the regulation through the National Land Law (NLL) is very important. The National Land Law's main provisions are in the Basic Agrarian Law which is the basis and legal cornerstone/base for owning and controlling land by other people and legal entities in order to meet their needs, for business or development<sup>[29]</sup>.

The issuance of a certificate by the *Badan Pertanahan Nasional/BPN* (National Land Agency/NLA) office indicates that there has been a land registration. However, in practice, the effectiveness of the issuance of land certificates can still be questioned in providing legal certainty and protection, whether the certificate really protects the rights (subject) or land (object) or only physical evidence of the certificate, because it often occurs when taken to the court, can be formally recognized as a certificate, but does not protect the subject and object. The State Administrative Court may refuse to cancel the land certificate, but the general court may have stated that the person registered in the certificate was not actually entitled to the land being disputed<sup>[30]</sup>.

Although the main function of the certificate of land rights is as evidence, however certificates are not the only means of proof of land rights. Rights to one's land may still be proven with other forms of evidence. Certificates as evidence are very important, for example in the case of transfer rights, and legal actions to transfer rights aims to transfer land rights to other parties (whom fulfill the requirements as rights holders), in the form of buying and selling land, exchanging, granting or testamentary grants, etc.

#### **4.2 Legal Responsibility of the Head of the National Land Agency Regarding Double Certificates Issued in the Implementation of Land Registration**

The responsibility of the Head of the Land Agency, in relation to the dual certificate issue, is very clearly stated in the land registration system agreement. Certificates are the result of administrative and legal processes. That is why violations in the form of double certificates are administrative violations and violations of laws that must be accounted for. Officials that render double certificates must

<sup>29</sup> Sunario Basuki, *Ketentuan Hukum Tanah Nasional (HTN) yang Menjadi Dasar dan Landasan Hukum Pemilikan dan Penguasaan Tanah*, Program Pendidikan Spesialis Notariat Fakultas Hukum Universitas Indonesia, p. 1.

<sup>30</sup> *Ibid.*, p. 207.

<sup>28</sup> *Ibid.* p. 425.

be punished because they relate to negligence and punishment of the chief officials of the National Land Agency which causes the double certificate to be a form of law enforcement. Article 62 Paragraph (2) of Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation Number 3 of 2011 concerning the Management of Land Case Studies and Handling confirms that administrative law has its defects as referred to in Paragraph (1) that are as follows:

- a. Procedure errors in the process of determining and/or registering land rights;
- b. Procedure errors in the process of registering the transfer of rights and/or substitutes certificates;
- c. Procedure errors in the registration process for affirmation and/or recognition of rights to former land owned by tradition;
- d. Procedure errors in the process of measuring, mapping and/or calculating the land area;
- e. Overlapping rights or certificate of land rights;
- f. Error of subject and/or object of rights; and
- g. Other errors in the application of legislation.

Article 64 of Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation Number 3 of 2011 also stipulates that applications/legal actions for land administration on certificates of land rights with administrative legal defects can be submitted by interested parties/applicants or their proxy. Article 65 regulates that the concerned parties as referred to in Article 64 Paragraph (1), the Republic of Indonesia's National Land Agency's (RI NLA) apparatus that know of the data and/or the issuance of illegitimate land rights regarding the substance and/or issuance process, RI NLA's apparatus has evidence of procedural errors in administration of the issuance of certificates of land rights and parties that have been harmed due to the issuance of an invalid certificate of land rights. The 7 (seven) types of administrative defects mentioned in Article 62 of the Regulation of the Head of the National Land Agency Number 3 of 2011, still require further study as these types of administrative defects still raise so many questions.

Article 62 of Government Regulation Number 24 of 1997 concerning Land Registration states that <sup>[31]</sup>. The Land Titles Registrar (LTR) in carrying out duties ignores the provisions referred to in Article 38, Article 39 and Article 40 as well as provisions and instructions given by the Minister or appointed Officer be subject to administrative action in the form of written warning until the termination of position as LTR, by not reducing the possibility of being prosecuted for damages by parties that suffer losses caused by the neglect of these provisions.

Specifically, regarding the sanctions for officials of the National Land Agency Office contained in Article 63 of this Government Regulation, namely: The Head of the Land Office which in carrying out duties ignores the provisions of this Government Regulation and the provisions in its implementing regulations and other provisions in carrying out the duties of land registration activities are subject to administrative sanctions in accordance with the applicable laws and regulations <sup>[32]</sup>.

<sup>31</sup> Government Regulation Number 24 of 1997 concerning Land Registration.

<sup>32</sup> Government Regulation Number 24 of 1997 concerning Land Registration.

In relation to the negligence of the officials is the existence of a criminal violation in land law in the making of physical data and juridical data conducted by several related parties such as the Head of the Land Office, Sub-District, and the person requesting said rights, in the *KUHPP* (Criminal Code) there can be found provisions to trap criminal offenders in the field of land registration, among others, by using Article 423 *Jo.* Article 425 Paragraph (1) of the Criminal Code and Article 55 of the Criminal Code concerning the participation (*delneming*) *Jo.* Article 385 of the Criminal Code concerning the acts of cheating (*bedrog*). This means that in all three articles, an official that intends to benefit themselves and others that participate in helping to neglect the duties and authority of officials that use their power to commit a criminal act. The case of physical data that is not in accordance with the actual situation in the field is suspected to be an indication of negligence from the apparatus that made a boundary or benchmark in the relevant land book, thus it needs to be examined again whether the action has been replaced with another benchmark that does not match the original size. The intended action is an indication of damage to goods that can be threatened with Article 406 and Article 407 Paragraph (1) of the Criminal Code.

In Article 1365 of the Civil Code, it is stated that every act that violates the law, which brings harm to another person, requires that the person who caused the wrongful issue of the loss compensates for said loss. And Article 1366 of the Civil Code states that everyone is responsible, not only for losses caused by one's own actions, but also for losses caused by negligence or inadvertence.

### 4.3 Global Positioning System (GPS) in the implementation of land registration of its relevance to law enforcement in the land sector in Indonesia

In order to accelerate the arrangement of measurement and mapping of land plots, it is possible to use modern technology with a Global Positioning System (GPS) and computerized data storage management. GPS is a system that maps the location of the earth's surface with the help of synchronization through satellite signals that emit microwave signals to the earth, these signals are received by reception devices on the earth's surface and are used to indicate the location of the earth's surface using time and speed.

In Article 14 of Government Regulation Number 24 of 1997 concerning Land Registration, it is stated that:

1. Measuring and mapping activities are carried out for the purposes of collecting and processing physical data.
2. Measuring and mapping activities as referred to in Paragraph (1) include:
  - a. the making of registration-based maps;
  - b. the setting of boundaries of plots of land;
  - c. the measuring and mapping of land plots and the making of registration maps;
  - d. land listing;
  - e. The making of measuring letters.

Land registration activities that include measurement activities, mapping and bookkeeping of rights are closely related to technical, juridical, and administrative data on land plots. The acquisition, management and handling of land data is different from other engineering activities. The specificity of the implementation of land registration is very

much related to the consideration of providing legal certainty and protection of the subject and object of land rights. In order to be able to provide legal certainty over the object of land rights, the measurement of the requested land must fulfill the cadastral technical rules and juridical rules in which the methods and procedures for obtaining land size data fulfill the principle of contradictory delimitation and publicity principles<sup>[33]</sup>.

Thus, it can be said that the relevance between the use of the Global Positioning System (GPS) with the aim of law is to provide hope that the possibility of overlapping a land area in the future can be minimized and, of course, the procedure for registering land rights for the community will be easier. In other words, it can be understood that in using this modern tool in land registration activities can achieve expectations, namely the absence of overlap in the issuance of certificates of land rights because the land coordinates are clear.

The Global Positioning System (GPS) can realize a legal certainty as well as legal protection for landowners. One of the objectives of land registration will be realized, namely to provide legal certainty and legal protection to the holders of the rights to a plot of land, apartment units and other registered rights so that they can easily prove themselves as the rightful holder of rights.

## 5. Closing

### 5.1 Conclusion

- a. Law enforcement to the implementation of the land registration system for the realization of legal certainty in the procedure of issuing land rights certificates is based on Government Regulation Number 24 of 1997 concerning Land Registration, where land disputes, in this case are double certificates, are settled through 3 (three) means, namely: 1) Direct settlement by the parties through deliberation; 2) Settlement through arbitration and alternate dispute resolution, 3) Settlement via judicial institution. However, procedural errors in the process of establishing and/or registering land rights as a basis for canceling land rights certificates without a court decision are difficult to carry out if they are disputed and still need further verification of the truth of the request for cancellation and the steps taken by the National Land Agency for law enforcement, namely by advising the court because it requires a court ruling that has permanent legal force.
- b. The responsibility of the Head of the Land Agency in relation to double certificates is very clear in the regulation of the land registration system. Officials that cause/render double certificates must be punished due to their negligence and sanctions for the chief officials of the National Land Agency which caused the double certificate to be a form of law enactment. In Article 62 Paragraph (2) of Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation Number 3 of 2011 concerning the Management of Land Case Studies and Handling comprehensively confirms the category of administrative legal defects. Specifically, regarding sanctions for the officials of the National Land Agency Office is found in Article 63 of this Government Regulation, namely: The Head of the Land Office, which in carrying out duties, ignores the provisions of this

Government Regulation and the provisions in implementing regulations and other provisions when carrying out the duties of land registration activities are subject to administrative sanctions in accordance with the applicable laws and regulations.

- c. The relevance between the use of the Global Positioning System (GPS) and the aim/purpose of the law is to realize legal certainty as well as legal protection for the landowners. One of the objectives of land registration will be realized, namely to provide legal certainty and legal protection to the holders of rights to a plot of land, apartment units and other registered rights so that they can easily prove themselves as the rightful owner.

### 5.2. Suggestion

Based on the discussion of the results of this study, it is then suggested the following:

- a. For the holders of land rights, it is better to register each of their land with the local Agrarian Affairs and Spatial Planning/National Land Agency office. This has clearly been stated in the Basic Regulations on Agrarian Principles Act (Basic Agrarian Law) which requires rights holders to register each of their land. Land registration is a very important issue in Basic Agrarian Law, because land registration is the beginning of the process of establishing proof of ownership of land rights.
- b. Law enforcement in land registration and issuance of certificates must be based on values that have been stated in the mandate of law so that the community can feel that the legal certainty and legal protection that they have craved has been achieved.

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