The Concept of Good Faith In Complete Systemic Land Registration In Realizing Legal Guarantee

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Abstract

Complete systematic land registration is regulated in Ministerial Regulation Number 6 of 2018 concerning Complete systematic land registration. Ministerial Regulation Number 6 of 2018 concerning Complete systematic land registration. Land registration is a form of implementation of government obligations to ensure certainty and protection of land ownership. The Government has guaranteed the legal certainty by Article 19 of Law Number 5 of 1960 concerning Agrarian Principles. Implementing the Basic Agrarian Law related to complete systematic land registration, in the Minister of Agrarian Regulation No. 6 of 2018 concerning Complete Systematic Land Registration, Article 22 states that if you do not have evidence, then in good faith, make a statement. This study will discuss the excellent faith theory of complete systematic registration in realizing legal certainty. As a guarantor in complete systematic land registration, the state guarantees the truth of the land registered in good faith.
A. Introduction

The right to control the state is the basis for the state regulating the earth and water and the wealth contained therein. The right to control the state is regulated in Article 33 paragraph (3) of the 1945 Constitution, which reads that the earth, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. The provisions of Article 33 paragraph (3) of the 1945 Constitution are redefined in Article 2 paragraph (2) of Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles (abbreviated as UUPA). Article 2 paragraph (2) of the UUPA states that: The State's right to control land gives the state the authority to regulate and administer the designation, use, supply, and maintenance of earth, water and space; Determine and regulate legal relations between people and the earth, water and space; Define and. Regulates legal relations between people and legal actions concerning the earth, water and space.

State authority is rooted in the right to control the state as regulated in the law on agrarian principles: a). The state's authority is limited by the authority possessed by the holder of land rights to exercise their rights. Holders of land rights obtain land rights status by registering. Land registration is a form of implementation of government obligations to ensure certainty and protection of land ownership. The Government has guaranteed the legal certainty by Article 19 of Law Number 5 of 1960 concerning Agrarian Principles. Furthermore, the Government provides a means of providing legal certainty guarantees by issuing Government Regulation Number 24 of 1997 concerning Land Registration. Article 3 letter (a) of PP No. 24 of 1997 states that Land Registration aims to provide legal certainty and legal protection to holders of rights to a parcel of land, apartment units, and other registered rights so that they can easily prove themselves as the right-holder in question.

One of the land registration activities includes land registration for the first time. Land registration for the first time is a land registration whose object has not been registered based on Government Regulation 24 of 1997. This registration activity is carried out in two ways, namely systematically and sporadically. Systematic land registration is a land registration activity carried out simultaneously by the Government in the territory or part of the territory of a village or sub-district.

The procedure for registering land rights for the first time is an activity to register a plot of land that has not yet been covered with land rights. Land registration uses parcels of land called parcels, which are limited and two-dimensional parts of the earth's surface with an area generally expressed in square meters. The data collected in land registration for the first time includes collecting and determining the correctness of physical data and juridical data regarding one or several objects of land registration for registration. Complete Systematic Land Registration is regulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 6 of 2018 concerning Complete Systematic Land Registration which is an amendment to the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 35 of 2016 as amended with the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 1 of 2017 concerning Amendments to the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 35 of 2016 concerning Acceleration of Complete Systematic Land Registration. In the Minister of Agrarian Regulation No. 6 of 2018 concerning Complete Systematic Land Registration, Article 22 states

1 Julius Sembiring, Hak Menguasai Negara Atas Sumber daya Agraria, Bhumi: Jurnal Agraria dan Pertanahan, STPTN Vol 2 No 2 Tahun 2016.
2 Afifah Kusumadara, Perkembangan Hak negara Atas Tanah: Hak menguasai Atau Hak memiliki, Jurnal media Hukuk Volum 20 No 2 Tahun 2013, hlm 265
3 Imam Koeswahyono, Hak menguasai Negara Perspektif Indonesia sebagai Negara Hukum, Jurnal Hukum dan Pembangunan Tahun ke-38 No.1 Januari-Maret 2008
4 Ikadek Yudiana, dkk, Efektifitas Pelaksanaan Program Pendaftaran Tanah Sistematik Lengkap di Kabupaten Buleleng, Jurnal Kertha Negara Volume 7 No1 Tahun 2018.
5 Isdiyana Kusuma Ayu, Problematika Pelaksanaan Pendaftaran Tanah Melalui Pendaftaran Tanah Sistematik Lengkap, Jurnal Legality Volume 27 No.1Tahun 2019 hlm 27-40.
that if you do not have evidence, then in good faith, make a statement. Basing the determination of land rights only by referring to statements in good faith will create new and complicated.⁶

The procedure for registering land rights for the first time is an activity to register a plot of land that has not yet been covered with land rights. Land registration uses parcels of land called parcels, which are limited and two-dimensional parts of the earth's surface with an area generally expressed in square meters. The data collected in land registration for the first time includes collecting and determining the correctness of physical data and juridical data regarding one or several objects of land registration for registration. Complete Systematic Land Registration is regulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 6 of 2018 concerning Complete Systematic Land Registration which is an amendment to the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 35 of 2016 as amended with the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 1 of 2017 concerning Amendments to the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 35 of 2016 concerning Acceleration of Complete Systematic Land Registration. In the Minister of Agrarian Regulation No. 6 of 2018 concerning Complete Systematic Land Registration, Article 22 states that if you do not have evidence, then in good faith, make a statement.⁷ Basing the determination of land rights only by referring to statements in good faith will create new and complicated land disputes. How does the concept of good faith in complete systematic land registration realise legal certainty?

This study aims to identify the concept of good faith in a complete systematic land registration to realize legal certainty. The method used in this research is normative juridical with a statutory and conceptual approach. The statutory approach uses regulations related to land registration, while the conceptual approach uses land registration system theory. The novelty of this research will provide concepts in systematic land registration and contribute to regulations, especially in significant theoretical and practical studies to determine suggestions, functions and theories in the legal practice of land registration systems.

B. Discussion

1. THE CONCEPT OF GOOD FAITH IN COMPLETE SYSTEMIC LAND REGISTRATION IN REALIZING LEGAL GUARANTEE

The right to control the state according to the 1945 Constitution of the Republic of Indonesia must be seen in the context of the rights and obligations of the state as a ruler, which is public law, not as a private legal owner, executor as well as supervisor, manager, use and utilization of natural resources, national.⁸ In exercising the right to control, the state regulates and organizes the designation, use, supply and maintenance of the earth, water and space, namely by means of land registration. Complete systematic land registration is regulated in Ministerial Regulation Number 6 of 2018 concerning Complete systematic land registration.

Ministerial Regulation Number 6 of 2018 concerning Complete systematic land registration. Aims to realize the provision of legal certainty and legal protection of community land rights based on the principles of simple, fast, smooth, safe, fair, equitable and open and accountable, so as to improve the welfare and prosperity of society and the state economy, as well as reduce and prevent land disputes and conflicts.

In Article 22 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning Number 6 of 2018 concerning complete systematic land registration, it is stated that if the evidence of community land ownership is incomplete or non-existent, it can be completed and proven by a written statement regarding ownership and/or physical control of the field. Land in good faith by the person concerned. The element of good faith consists of the fact that was physically controlling, using, utilizing and maintaining land from generation to generation within a certain time and/or obtaining it by not violating

⁶ Isdiyana Kusuma Ayu, *Ibid*, hlm 27
⁷ Rahmat Ramdani, *Pendaftaran Tanah Sebagai Langkah untuk mendapat Kepastian Hukum Terhadap Hak atas Tanah*, Jurnal Sosial dan Ekonomi Volume 2 No 1 Tahun 2021.
⁸ Winahyu Erwiningsih, 2009, *Hak Menguasai Negara Atas Tanah*, Total media, Yogyakarta, Hlm 101.
the provisions of the legislation. Good faith is proven by the statement of the applicant/participant of the Complete Systematic Land Registration Adjudication stating that there are no objections from other parties on the land owned or not in a state of dispute; and does not include or is not an asset of the Government, Regional Government, or State-Owned Enterprises/Regional Owned Enterprises; or Forest Area.

The statement letter is made provided that it is witnessed by at least 2 (two) witnesses from the local environment who do not have family relations with the person concerned up to the second degree, both in vertical and horizontal kinship, stating that the person concerned is the rightful owner and the one who controls the plot of land; and made based on true information and can be accounted for both civilly and criminally, and if in the future there are elements of untruth in the statement it is not the responsibility of the Complete Systematic Land Registration Adjudication Committee.

This good faith is the main requirement for carrying out bookkeeping or registration of land rights or what is often called the general public by certifying the physical land. Applying the principle of good faith can guarantee protection for people with good intentions to obtain rights from people who are considered legal rights holders. However, according to Hoge Raad, the principle of good faith is a doctrine based on rationality and propriety, so proof of good faith over ownership of land rights is more appropriate through the courts. The principle of good faith can be used to provide evidence for the general register map at the Land Office.  

Black's Law Dictionary defines good faith as "a state of mind consisting of (1) honesty in belief or purpose, (2) fidelity to one's duties or obligations, (3) adherence to reasonable commercial standards of fair dealing in trade or business. particular, or (4) there is no intention to find or seek profit to be the basis or foundation."

Good faith in physical control, which is used as the basis for the registration of land rights, must be clear and not cause multiple interpretations or legal ambiguity. The meaning of good faith in Article 22 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning Number 6 of 2018, when examined from various views of experts, means that the act of physical control is carried out without deceit or deception carried out openly (known to the public / not known to the public). Clandestinely), without other parties and does not only see personal interests, and is considered appropriate in the norms that develop in the community. Article 22 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning Number 6 of 2018 is closely related to the principle of legal certainty.

Legal certainty in the registration of land rights is an objective contained in Article 19 of the Basic Agrarian Law. Because registration of land rights also means issuing land certificates as proof of rights attached to the land. This land registration is a strong piece of evidence. The purpose of complete systematic land registration is further detailed in Article 2 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning Number 6 of 2018; The implementation of Complete Systematic Land Registration activities carried out village by village in the district and village by village in urban areas covering all land parcels throughout the territory of the Republic of Indonesia, which aims to realize legal certainty and legal protection as well as prevent land disputes and conflicts.

Good faith in physical control, which is used as the basis for the registration of land rights, must be clear and not cause multiple interpretations or legal ambiguity. The meaning of good faith in Article 22 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning Number 6 of 2018, if it has been interpreted from various expert views, it means that the act of controlling the physical body is carried out without trickery or trickery which is carried out openly (known to the public). Not secretly), without other parties and not only seeing personal interests, and is valued properly in the norms that develop in the community.

The right of control over land is a combination of authority, obligation and prohibition for the holder of the right to do something for the land in question. Land tenure rights can be interpreted as

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9 Ayu Bimo Setyo Putri, Itikad Baik Pada Pendaftaran Hak Atas Tanah Dalam Sistem Hukum Pertanahan, Jurnal Cakrawala Hukum, Vol.8, No.1 Juni 2017, hlm. 15
10 Bryan A. Garner, Black's Law Dictionary, edisi ke- 8 , St. Paul: Thomson West, (2004), hlm 713
legal institutions if they have not been linked to certain land as the holder of the rights.\textsuperscript{11} However, regarding land tenure rights, it becomes a real legal relationship if it is connected to the land and one particular subject is the right holder. In general, land tenure can be divided into land rights and state land. State land is directly controlled by the state as referred to in the Basic Agrarian Law, while land rights are owned by individuals or legal entities with a land right by applicable regulations. The meanings of "control" and "control" can be used in various physical meanings, specifically in the juridical sense, both civil and public. Juridical control is based on rights protected by law and gives authority to the right holder to physically control the land as their right. However, there is also juridical control; although the authority to control the land physically, in practice, the physical control is carried out by other parties.\textsuperscript{12}

The state's authority is realized through land registration. Land registration includes registration activities which are divided into two, namely: collection and processing of physical data related to land, proof of rights and bookkeeping, issuance of certificates, presentation of physical data and juridical data, and storage of general lists and documents. Meanwhile, at the stage of maintaining land registration data, there is a registration of transition and encumbrance of rights and registration of changes to other land registration data.

A benchmark of good faith is needed in physical control to ensure the achievement of the current land registration goals, one of which is orderly land administration, to provide the necessary data for the benefit of people in need and so that the citizens are prosperous and there are no disputes. This is, of course, following the ideals of the state contained in the 1945 Constitution of the Republic of Indonesia in Article 33, Paragraph (3), namely regarding the use of earth, water and natural resources contained within the power of the Republic of Indonesia to be used for as much as possible. The prosperity of the people.

Realizing and protecting these goals requires justice in the laws that have been created so that no one feels disadvantaged and existing laws protect their rights as citizens. Good faith does not only refer to the values that exist in society because these values are part of society. This good faith describes a standard of justice in society.\textsuperscript{13} Philosophically, good faith is divided into 2 (two) namely subjective good faith and objective good faith.\textsuperscript{14}

1. Subjective good faith

According to Wiryono Prodjudikoro, good faith in this subjective sense is in the form of honesty, namely the estimation of a person when the legal relationship begins. This estimation can be in the form of estimation in the heart of the person concerned that the conditions necessary for the entry into force of the legal relationship have all been fulfilled.

2. Good faith objective

Good faith objectively is propriety which lies in the circumstances surrounding the agreement itself and the actions that both parties will take as an act of implementation regarding a matter.

Good faith aims to protect people in good faith, obtaining rights from the state that stipulates a person as the legal right holder. The actual right holder can only reclaim his rights if he can prove that the person who has obtained his rights did not have good intentions. It is just that, in reality, it will have difficulty proving as an indicator of a person's good faith. The consequence of applying the principle of good faith is that a person will always lose the right if another person transfers the right without the knowledge of the actual owner, so the principle of legal certainty is ignored. Regarding land law, Indonesia wants certainty about who is the holder of property rights or other rights to a plot of land. In reality, holders of land certificates do not feel secure about the certainty of their rights, even the attitude

\textsuperscript{11} Arba, \textit{Hukum Agraria Indonesia}, Sinar Grafika, Jakarta, 2005
\textsuperscript{12} Ayu Bimo Setyo Putri, \textit{Itikad Baik Pada Pendaftaran Hak Atas Tanah Dalam Sistem Hukum Pertanahan}, Jurnal Cakrawala Hukum, Vol.8, No.1 Juni 2017,hlm 17
\textsuperscript{13} Warmelo, P. Van. 1976. An Introduction to The Principle of Roman Law. Juta and Co Ltd.Cape Town
\textsuperscript{14} Mohammad Amar Abdillah, \textit{Perlindungan Hukum Pemilik Merek Tidak Terdaftar Atas Tindakan Pendaftaran Mereknya Oleh Pihak Lain Ditinjau Dari Asas Itikad Baik}, Volume 2 No. 4, Juli 2019
of doubt that often arises with the many lawsuits demanding the cancellation of land certificates through the courts. If only based on the statement of land tenure.\textsuperscript{15}

In addition, there are several principles related to legal certainty in land registration in general, namely.\textsuperscript{16}

a. Mirror principle (mirror principle) means that the records in the register can truly reflect the state of being legally correct in reality in the field;

b. The curtain principle means that there is no historical research before there is a need to register;

c. Insurance/guarantee principle (principle of guarantee/insurance) determines that the state guarantees the truth that is registered in good faith, and the winning plaintiff (only) receives compensation (sourced from insurance); this provision is found in the Torrens system in Australia;

d. Booking principle (bookkeeping principle) means that if there is a transfer of land rights, it must be legal after being registered in the general register, so the right is not valid if it has not been recorded in the public register. This is by Article 23 paragraph (2) of the Basic Agrarian Law, which states that registration is a powerful means of proof regarding the annulment and validity of the transfer, the imposition of such rights. However, this provision is not in line with the provisions of customary law on land that the rights have been directly transferred since the parties have agreed to make a sale and purchase of the land and its price.

e. Consent principle (approval) means that the registered party must agree to changes in the registration data in the general register (no change in the general register without his consent), with the exception that the person concerned dies or has passed the time (approval is not necessarily voluntary).

In the land registration system in Indonesia, which adheres to a land registration system of negative publications with positive tendencies, the state does not compensate parties who lose their land rights due to registration errors or fraud. Hence, the state is only the one who records the validity of legal actions committed against the land. Seeing that the publication system adopted by Indonesia is a negative publication system with a positive tendency, then if it is related to the principle of legal certainty, it can be concluded that the state has not succeeded in creating legal certainty in carrying out complete systematic land registration because the state uses the principle of bookkeeping and has not moved to the principle of the state as a guarantor. The state guarantees the truth of the land registered in good faith.

However, in the explanation of Government Regulation Number 24 of 1997, it is stated that the weakness of the negative publication system is that the party whose name is listed as the holder of the rights in the land book and certificate always faces the possibility of a lawsuit from another party who feels he owns the land. Generally, the weakness mentioned above is by using the acquisition agency or adverse possession. Our land law which uses the basis of customary law, cannot use this institution because the law does not recognize it. However, in customary law, an institution can be used to overcome the weakness of the negative publication system in land registration, namely the rechtverwerking institution. In customary law, if a person leaves his land uncultivated for a while, then the land is worked on by someone else who acquired it in good faith, and then the original owner's right to reclaim the land is lost.\textsuperscript{17}

Further explained, the purpose of applying the principle of rechtverwerking is to provide legal certainty to parties who in good faith control the land and have been registered as rights holders in the land book with a land certificate as proof of ownership. Thus, the principle of rechtverwerking cannot provide protection and can be detrimental to those who own the land but cannot prove it with evidence in the form of a land certificate. Legal protection will also be challenging to provide to land rights holders who obtain land rights only based on good faith.\textsuperscript{18} So that the determination that the land is

\textsuperscript{15} Supriyadi, \textit{Reorientasi Asas Itikad Baik/Kebenaran Sebagai Dasar Kepemilikan Hak Atas Tanah}, Jurnal Humani Vol 9 No 1 Tahun 2019 semarang, hlm 105

\textsuperscript{16} I Gusti Nyoman, \textit{Modul Hukum Tanah}, Sekolah Pertanahan Nasional, Yogyakarta, hlm 40

\textsuperscript{17} A. P. Parlindungan, Komentar Atas Undang-Undang Pokok Agraria, Mandar Maju, Bandung, 2008, hlm 126

\textsuperscript{18} Epipanni Sihotang, \textit{Itikad Baik Penguasaan Fisik Sebagai Dasar Perolehan Kepemilikan Hak Atas Tanah (Analisis Putusan Mahkamah Agung Republik Indonesia Nomor 269pk/Pdt/2015)}, tesis Fakultas Hukum Universitas Sumatra Utara, 2017, hlm 78
controlled in good faith is not only made a personal statement, but in order to have reliable evidentiary power, it must be determined based on a court decision.

C. Conclusion

The publication system adopted by Indonesia is a negative publication system with a positive tendency, so if it is related to the principle of legal certainty, it can be concluded that the state has not succeeded in creating legal certainty in carrying out complete systematic land registration because the state uses bookkeeping principles in complete systematic land registration and has not moved to state principles. As a guarantor in complete systematic land registration, the state guarantees the truth of the land registered in good faith.

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