

RECONSTRUCTION OF LAND REGISTRATION LAW IN REALISING JUSTICE VALUE- BASED AGRARIAN REFORM

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Submission date: 08-May-2024 02:22PM (UTC+0700)

Submission ID: 2374050350

File name: Ragil_Ibnu_Hajar_Paper_English.pdf (996.58K)

Word count: 8091

Character count: 42548



International Conference on Law and Social Science

Editorial Office: Faculty of Law, Universitas Islam Riau, Pekanbaru, Indonesia.

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RECONSTRUCTION OF LAND REGISTRATION LAW IN REALISING JUSTICE VALUE-BASED AGRARIAN REFORM

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Abstract:

Land registration is a series of activities, carried out by the State / Government continuously and regularly, in the form of collecting certain information or data about certain lands in certain areas, processing storage and presentation for the benefit of the people, in order to provide legal certainty in the field of land including evidence and maintenance. Land law policy in the choice of implementation in the HAT registration system, irregularities occur and result in the emergence of conflict disputes. In the period 2015 to 2020, there are still 172 cases of land disputes and conflicts that must be resolved in Riau. The most prominent are land tenure and ownership disputes, which reached 102 cases or 59 per cent. The approach method used in this research is the socio-legal research approach. Statue approach and case approach. The results of this research are: 1) Land registration regulations in realising justice value-based agrarian reform. Negative publicity (positive element) land registration has encouraged the existence of a centralised bureaucracy, which is due to the fact that in the customary land registration system there is no clear accountability for the product of land certificates as a result of the implementation of registration. Land law policy on the negative publicity stelsel (positive element) in the land registration system has not shown the achievement of good services in the bureaucratic system and land public services in Indonesia. 2) Reconstruction of Land Registration Policy Based on Justice Value. The reconstruction of Article 97 of Government Regulation of the Republic of Indonesia Number 18 of 2021 concerning Management Rights, Land Rights, Flat Housing Units, and Land Registration states that land certificates, compensation certificates, village certificates, and other similar documents intended as information on the control and ownership of land issued by the village head / sub-district head can only be used as instructions in the context of Land Registration. The deletion of the word only means that the evidence from the letter of control and or information can be processed for land registration at the BPN.

Keyword: Legal reconstruction, land registration and agrarian reform

I. Introduction

Indonesia is a state of law based on Pancasila and Undang Undang Dasar Negara Republik Indonesia Tahun 1945 (UUD NRI Tahun 1945). The realisation of

community justice, specifically related to land tenure and ownership is regulated in Pasal 33 ayat (3) UUD NRI Tahun 1945¹, which determines the principle that the earth, water and natural resources contained therein are controlled by the state and

¹ Urip Santoso, *Hukum Agraria dan Hak Atas Tanah*, Kencana, Jakarta, 2008, hlm 50.

utilised for the greatest prosperity of the people.

Land as one of the natural resources that has economic value and has a high socio-political and defence and security value.² Therefore, land development policy must be an integral part of national development policy.

Land for the fulfilment of needs for development in Indonesia is increasing, both as a place to live and as a place for business activities. In connection with this, the need for support in the form of legal certainty in the land sector will also increase. Providing certainty in the land sector requires the availability of a written, complete and clear legal instrument, which is implemented consistently in accordance with the spirit and content of its provisions.

³ In human life, the existence of land is inseparable from all human actions themselves, because land is a place for humans to live and continue their lives. The existence of land in life in the world as one of the natural resources is a gift from God Almighty. Land is the most basic need of human life as a source of livelihood and livelihood. In fact, land and humans are inseparable from the time humans are born until humans die. ⁵ Humans live and carry out activities on the land, so every human being is related to the land. The importance of land for humans causes land to have value and benefits for long-term development, the role of land for the fulfilment of various needs will increase.³

Land is a necessity, every human being always tries to own it, it is a reality even if

some never own land. After that, they will keep it no matter what. Land can be owned by anyone, individuals, communities as a group, or legal entities. Once upon a time land became an inheritance or a company asset and even a sacred object. Clearly, land has economic value; the greater the demand and need for land, the higher the value of land, which inevitably results in higher land conflicts.⁴

The need for land is currently increasing in line with the increase in population, the number of business entities, and other land-related needs. Population Growth. It is undeniable that the population is growing rapidly. This growing population will lead to an increasing need for land for living purposes such as housing and farming. There is an increase in the needs of the population in order to improve the quality of life. Quality of life requires a growing space. The quality of food must also grow along with the development of agricultural technology. The city is growing so that there will be an expansion of the development of the city or the shift of a city. If the space in the city is getting crowded, the thing to do is to expand the city. Land is in short supply to be utilised. Control of land is increasingly difficult to do. Especially if the land being sought is land that has a strategic position. In addition, landowners are also difficult to release land except at high prices. The growing development makes land a very important thing. The development of an industry cannot be separated from the need for land in an area.

² Irawan Soerodjo, *Kepastian Hukum Hak Atas Tanah di Indonesia*, Arkola, Surabaya, 2002, hlm 25.

³ Susyanti, *Bank Tanah: Alternatif Penyelesaian Masalah Penyediaan Tanah Untuk Pembangunan*

Tanah Kota Berkelanjutan, Makassar, As Publishing, 2010, hlm. 1.

⁴ Rosnidar, Sembiring. "Hukum Pertanahan Adat." *Depok: Rajawali Pers*, 2017.

15 To realise legal certainty over land, land registration for the purpose of legal certainty (legal cadastre) emerged. The targets are land parcels controlled by a right and known as land rights or parcels which are then measured, mapped and researched by the right holders. The result is a map and list that provides an explanation of who the right holder is, its location, and its size (cadastral data).

In connection with state control rights and land tenure rights according to customary law (ulayat rights) need to be legalised, so that land rights arising on the basis of state control rights and ulayat rights, which are granted 14 Indonesian citizens and legal entities in the form of property rights, business use rights, building use rights, and others need to be registered to obtain legal certainty.

To implement this basic principle, it was enacted Undang-Undang Number 5 Tahun 1960 about Peraturan Dasar Pokok-Pokok Agraria (UUPA) which regulates the control, ownership, use and utilisation of land to realise the welfare of the people in an equitable manner.⁵ The purpose of UUPA as stated in its General Elucidation is:⁶

1. To lay the foundation for the formulation of a national agrarian law, which will be an instrument to bring prosperity, happiness and justice to the state and the people, especially the peasantry, in the framework of a just and prosperous society;
2. To lay the foundation for the unity and simplicity of land law;
3. Laying the foundation to provide legal certainty regarding land rights for the people as a whole.

⁵ Ali Achmad Chomzah, *Hukum Pertanahan*, Prestasi Pustaka, Jakarta, 2002, hlm 111.

⁶ Urip Santoso, *Pendaftaran dan peralihan Hak Atas Tanah*, Kencana, Jakarta, 2011, hlm 1.

To curb the ownership of land rights, evidence of ownership of land rights in the form of land certificates is made, because it can guarantee legal certainty for everyone. The realisation of the provision of legal certainty of land rights is contained in Pasal 19 UUPA, That's:

- (1) In order to ensure legal certainty, the Government shall carry out land registration throughout the territory of the Republic of Indonesia, in accordance with the provisions stipulated by Government regulation;
- (2) The land registration mentioned in ayat (1) including:
 - a. Land measurement, mapping and bookkeeping;
 - b. Registration of land rights and the transfer of such rights.

Providing evidence of rights that acts as a strong proof tool.

To organise land registration⁷ as referred to Pasal 19 UUPA, Retrieved Peraturan Pemerintah Number 10 Tahun 1961 about Land Registration (PP Number 10 Tahun 1961) which is replaced with Peraturan Pemerintah Number 24 Tahun 1997 about Land Registration (PP Nomor 24 Tahun 1997) which is based on the principles of simple, safe, affordable, up-to-date and open, and aims to provide legal certainty and legal protection of land rights as well as provide information and organise orderly land administration. The publication of PP Number 18 Tahun 2021 motivated by an awareness of the increasingly important role of land in development, which increasingly requires the support of legal certainty in the land sector.

Agrarian Reform consists of six schemes. One of them is the People's Land

⁷ Pendaftaran tanah menurut Pasal 1 Peraturan Pemerintah Nomor 24 Tahun 1997 tentang pendaftaran tanah.

Certification with a total target of 3.9 million hectares of certificates. Efforts to achieve this target include cross-sectoral cooperation between Kementerian Agraria and Tata Ruang/Badan Pertanahan Nasional (ATR/BPN), Kementerian Dalam Negeri, Kementerian Koperasi dan UKM, Kementerian Kelautan and Perikanan, and Kementerian Pertanian in the programme Sertifikasi Hak Atas Tanah under the coordination of Kementerian Koordinator Bidang Perekonomian. In supporting the success of the Economic Equalisation Policy, achieving the target number of certificates produced is not the end result. Community empowerment is needed as a follow-up to the certification. Community empowerment in the land sector in its implementation is carried out through the concept of Agrarian Reform which consists of 2 (two) broad lines, namely asset reform and access reform. Asset reform is implemented by legalising assets and strengthening rights through land rights certification. Meanwhile, access reform is implemented through opening access to capital through banking institutions, financial institutions and cooperatives, mentoring, coaching and facilitation to improve the production process and opening access to marketing of production products. Quality economic growth will not be sustainable due to 4 (four) factors of inequality. For this reason, the government is focusing on 4 (four) KPE quick win programmes that have the greatest impact on reducing inequality in society. One of them is land and land tenure.

⁸ PPID-Admin, Sengketa Dan Konflik Pertanahan Harus Diselesaikan Secara Holistik Dari Hulu Ke Hilir, *Kejahatan Pertanahan*, 28 Maret 2023, <https://ppid.atrbpn.go.id/bpn/content/details?key=se>

In the opinion of Direktur Jenderal Penataan Agraria, Andi Tenrisau stated that land disputes and conflicts are very burdensome for the community as well as material and immaterial losses. If disputes and conflicts are not resolved properly, of course, the mandate of the Government of Indonesia will not be fulfilled Pasal 33 ayat (3) Undang-Undang Dasar (UUD) 1945 become inhibited. "The state must make policies, must organise Sumber Daya Manusia (SDM), must manage, including having to oversee the prosperity of the people in researchers".⁸

II. Legal Materials and Methods

Society in its complex bureaucratic system has, since the creation of its laws, been influenced by the power structure. Personal social forces have influenced and are already at work. Looking at the operation of the law-making system, those who benefit are the wealthier and those in society who are active in policy activities.⁹The owners of capital and the CEOs of large corporations, through their organisations, will enjoy the success of their struggle to pass laws that benefit them. In contrast, the interests of ordinary people will be marginalised or receive less attention. The struggle of the owners of capital or the leaders of large companies is a logical consequence of the various advantages and advantages possessed by those who have power.

Starting from the concept of the operation of law, it can be revealed that it has been produced by regulatory agencies related to

[sengketa-dan-konflik-pertanahan-harus-diselesaikan-s](#)⁹[cara-holistik-dari-hulu-ke-hilir.](#)

⁹ Chambliss & Seidman, 1971: 65, lihat pula dalam Suteki, *Rekonstruksi Politik Hukum, Hak Atas Air Pro Rakyat*, Op Cit. hlm. 26

the bureaucratic system and BPN public services, among others, as follows:

1. Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 pasal 33 tentang Perekonomian Nasional dan Kesejahteraan Sosial;
 2. Tap MPR RI No. IX Tahun 2001 tentang Pembaharuan Pertanahan dan Sumber Daya Alam;
 3. UU No. 7 Tahun 2004 tentang Sumber Daya Air;
 4. UU No. Tahun 1999 tentang Kehutanan;
 5. UU No. 25 Tahun 2007 tentang PMA (Penanaman Modal Asing);
 6. UU No. 18 Tahun 2004 tentang Perkebunan;
 7. UU No. 27 Tahun 2007 tentang Pesisir Laut dan Pulau Kecil;
 8. UU No. 4 Tahun 2009 tentang Minerba (Pertambangan Mineral dan Batubara);
 9. UU No. 31 Tahun 2004 tentang Perikanan;
 10. UU No. 5 Tahun 1984 tentang Perindustrian (Pelayanan Ijin Industri);
 11. UU No. 32 Tahun 2004 tentang Pemerintahan Daerah;
 12. UU No. 30 Tahun 2004 tentang Jabatan Notaris.
- Meanwhile, in particular, regulations on the use, control, ownership and utilisation of land have been passed and enforced, namely:
1. Land Stewardship:
 - a. UU No.5/1960 tentang Pokok-pokok Agraria.
 - b. UU No.4/1982 tentang Ketentuan Pokok Pengelolaan Lingkungan Hidup.
 - c. PP No. 16/2004 tentang Penatagunaan Tanah.
 - d. PP No.36/1998 tentang Penertiban dan pendayagunaan tanah terlantar.
 - e. PP No.9/1987 tentang Penyediaan dan penggunaan tanah untuk keperluan tempat pemakaman.
 - f. PP No.23/1982 tentang Irigasi.
 - g. Keppres No.32/1990 tentang Pengelolaan kawasan lindung
 - h. Keppres No.57/1989 tentang Tim Koordinasi Pengelolaan Tata Ruang Nasional.
 - i. Peraturan Presiden No. 36 Tahun 2005 tentang Pengadaan Tanah bagi Kepentingan Umum
 - j. Peraturan MNA/Kepala BPN No.2/1999 tentang Ijin Lokasi.
 - k. Peraturan MNA/Kepala BPN No. 5 Tahun 1999 tentang Pedoman Penyelesaian Hak Ulaya Masyarakat hukum Adat.
 2. Land Tenure Arrangements:
 - a. UU No. 56/1960 tentang Penetapan Luas Tanah Pertanian.
 - b. PP. No. 8 Tahun 1953 tentang Penguasaan Tanah Negara.
 - c. PP No. 224/1961 tentang Pelaksanaan Pembagian Tanah Dan Pemberian Ganti Kerugian.
 - d. PP No. 4/1977 tentang Pemilikan Tanah Secara Guntai (Absentee) bagi Para Pensiunan Pegawai Negeri.

- e. PP. No. 40 Tahun 1996 tentang HGU, HGB, Hak Pakai Atas Tanah.¹³
 - f. Keppres No.55/1980 tentang Organisasi dan Tata Kerja Penyelenggara Landreform.
 - g. PMDN No.15/1974 tentang Pedoman Tindak Lanjut Pelaksanaan Landreform.
3. Regulations relating to Land Registration:
- a. UU No.5/1960 tentang Pokok-pokok agraria.²
 - b. UU No.4/1996 tentang Hak Tanggungan.
 - c. UU No.21/1997 tentang Bea perolehan hak atas tanah dan bangunan.
 - d. UU No.20/2000 tentang Perubahan atas No.21/1997.
 - e. UU No. 25/2009 tentang Pelayanan Publik.
 - f. PP No.24/1997 tentang Pendaftaran Tanah.²
 - g. PP No.37/1998 tentang Pejabat Pembuat Akta Tanah (PPAT).
 - h. PP No.28/1977 tentang Perwakafan tanah milik.
 - i. PP No.48/1994 tentang Pembayaran pajak penghasilan (PPh) atas penghasilan dari pengalihan hak atas tanah/atau bangunan.
 - j. PP No.4/1988 tentang Rumah Susun.
 - k. Peraturan MNA/KaBPN No.3/1997 tentang Ketentuan pelaksanaan PP.24/1997.²
 - l. Peraturan MNA/KaBPN No.2/1998 tentang Surveyor berlisensi.
 - m. Peraturan MNA/Kepala BPN No.5/1989 tentang Kewenangan penandatanganan Buku Tanah dan Sertipikat.
 - n. Keputusan MNA/KaBPN No.9/1997 jo. No.15/1997 jo. No.1/1998 tentang Pemberian hak Milik atas tanah untuk Rumah Sangat Sederhana dan Rumah Sederhana.
 - o. Keputusan MNA/KaBPN No.16/1997 tentang Perubahan hak Milik menjadi hak Guna Bangunan atau hak Pakai dan hak Guna Bangunan menjadi hak Pakai.⁴

The existing findings that the implementation of the land registration system in Indonesia has not been able to create certainty of rights and orderly land administration, which is due to the fact that the BPN has not used and utilised adequate cutting-edge technology, the application of technology is only limited to theory and regulatory texts, not yet at the level of implementation in the field. In theory, in order to support the acceleration of land titling, the government should prioritise the activities of the Deputy of Survey, Measurement and Mapping to create large-scale base maps and maps of land parcels and other thematic maps digitally with an adequate data base in accordance with the latest technological developments and legal developments in this modern era. So that the basic maps and maps of land parcels made by BPN have adequate, effective and efficient capabilities with the value of their manufacture, thus the cost (cost) incurred is cheaper, because these maps can also be used by other agencies such as the UN Office, City Planning Office, Gas Company, Drinking Water, PLN, Population and Post Office to support the accuracy of

performance in the provision and processing of the required data. Currently, large-scale base maps and digital land parcel maps with the latest technology are needed. As an example of an appropriate analogy is in the framework of the driver's activities to find the destination address using GPS (Global Positioning System) can already be achieved.

BPN activities, especially land registration, need to be prioritised in making basic maps or thematic maps, especially digital land parcel maps. The land information system supported by land computerisation (LOC/Land Office Computerisation) needs to be continued and developed so that a land system based on land parcels with a single identity number or parcel identity number can be created. The most important thing to do is physical cadastral activities, namely an activity of making registration maps equipped with data on land tenure and ownership in the form of land registers whose activities start from urban to rural areas to obtain spatial data equipped with P4T data.

The activity of mapping and bookkeeping of land which is a follow-up activity to the measurement of land parcels is very necessary in order to create certainty of rights and orderly land administration. For this reason, it is necessary to hold bookkeeping to ensure orderly administration as stipulated in the law pasal 23, PP. 24/1997, namely that for the purpose of registering rights, a new land right is proven by:

1. Determination of the granting of rights from the official authorised to grant the rights concerned in accordance with the applicable provisions if the granting of rights originates from State land or management rights land,

2. Original evidence of the PPAT deed containing the granting of the right by the holder of the hak milik to the recipient of the right in question in the case of a right to use a building and a right of use on the land of a hak milik.
 - a. management rights evidenced by the determination of the granting of management rights by the authorised officer;
 - b. waqf land evidenced by a deed of pledge of waqf;
 - c. hak milik atas satuan rumah susun evidenced by a deed of separation;
 - d. the granting of a mortgage is evidenced by a deed of granting a mortgage.

Land parcels that have been measured regarding their location and boundaries are mapped or entered (recorded) into a registration map or mapping activity and the land parcels are recorded in a list called a land register. The land parcels in the land register are arranged based on sequential numbers, namely the field identity number (NIB) which is the single identity number of a land parcel. It is included in the land register regarding who controls or owns the land as well as the origin or status of the land such as customary land, state land or land that already has a land right including data on the control, ownership, use and utilisation of land abbreviated as P4T. If the data of the registration map and land register are complete, it is hoped that land services can be carried out faster and more certainty of rights and there is no need for lurah or village head certificates regarding girik. The measurement, mapping and bookkeeping of land, also known as physical cadastral activities, are activities to

obtain initial data that is needed for services in the land sector.

The land book is the place where registration of land rights, transfer of rights and encumbrance of rights as well as the birth of rights or the abolition of land rights, which previously land registration activities have never done so. As the demands of the rights registration system in accordance with the UUPA where the land book is the place to register rights transferred or encumbered based on PPAT deeds,¹⁰ then the deed made by the PPAT must be ensured its formal correctness so that Departemen Agraria/BPN it is necessary to issue deed stamps that can be controlled with certain codes and numbers to ensure the formal correctness of the deed.

As previously explained, the proof of the former Hak Lama and Hak Milik Adat is carried out through evidence of the existence of the right in the form of written evidence, witness testimony and / or statements concerned whose truth level is considered sufficient by the authorised official. In the event that the aforementioned evidentiary tools are not or no longer available in full, the recording of rights can be carried out based on the fact of physical possession for 20 (twenty) years or more consecutively with the following conditions: a) such possession is carried out in good faith and openly and strengthened by reliable testimony, b) such possession is not disputed by the customary law community or the village/kelurahan concerned or other parties. In order to assess the veracity of the evidence, physical and juridical data on the land concerned are collected and examined. The physical and

juridical data are then announced at the village office, sub-district office, adjudication office, land office, and other places deemed necessary for 60 (sixty) days for routine applications (sporadic) and 30 (thirty) days for registration through the adjudication project (systematic). If there are no objections or challenges from any party after the period of review, the title book can be opened and a land title certificate issued. Documents required for Conversion registration:

- a. conversion application letter;
- b. filling in the form called DI. 201 and its accompanying forms;
- c. the identity of the applicant;
- d. original proof of ownership (one of the following):
 - 1) grosse akta hak eigendom, or a certificate of title under the Swapraja Regulation;
 - 2) a certificate of title under PMA No.9/1959, or a decree granting a title of ownership, or a petuk pajak bumi/landrente, girik, pipil, kekitir and verponding of Indonesia;
 - 3) a deed of transfer of rights made under the hand with the signature affixed to it.
- e. testimony by kepala Adat/Desa/Kelurahan before the entry into force of Peraturan Pemerintah No.24/1997, atau deed of transfer of rights made by PPAT, or other applicable evidentiary tools according to the provisions perundang-undangan.

¹⁰ Berdasarkan PP 24 Tahun 1997, BPN dalam menjalankan tugasnya dibantu oleh Pejabat Pembuat Akta Tanah (Notaris-PPAT).

Applications for land rights are made for state land that has never had any rights attached to it, can be made by anyone (free) provided that they meet the ownership limit requirements, while registration of state land originating from rights that are still attached and the term of the rights attached has not expired, it can be done by requesting an extension of the state land from the origin of the rights. Meanwhile, applications for state land to which a right has been attached and the term of the right has expired can be requested for the renewal of the right. This provision also applies to former western rights and lands that have been registered under the UUPA.

When broken down, the State's Right of Control over land and natural resources has the following structure:

- a. The subject of the State Right of Control is the State of the Republic of Indonesia, as the organisation of the power of all the people of Indonesia. In its implementation, the State may be represented by the Government and or Regional Governments;
- b. The substance of the State Master Right is the authority that can be exercised by the State based on the State Master Right, including:
 1. Regulate and organise the allocation, use, supply and use of the earth, water and space;
 2. Determine and regulate legal relationships between people and the earth, water, and space;
 3. Determining and regulating legal relationships between persons and legal acts concerning the earth, water and space.

- c. The basis of the State's Right to Control is the delegation of the authority of the Indonesian Nation, which was carried out by the Representatives of the Indonesian Nation at the time of drafting the Constitution. UUD NRI 1945 and formed the Republic of Indonesia on 18 August 1945. The delegation of this task was outlined in Pasal 33 UUD NRI 1945.
- d. Purpose Hak Menguasai Negara is the granting of authority that derives from the state's right of control to Pasal 2 ayat (2), to be used to achieve the greatest prosperity of the people, in the sense of nationality, welfare and independence in an independent, sovereign, just and prosperous Indonesian legal society and state.

Surat Keputusan Pendaftaran Tanah (SKPT) is a decree that explains the validity of physical and juridical data. SKPT is part of the attachment to the HAT application, which is an attachment required to apply for a land right. In addition to the SKPT, what needs to be attached to the land registration application are Surat Ukur (SU) The SKPT is not a proof of ownership of the land rights being requested, which explains the physical data on the land concerned. This SKPT is not a proof of ownership of a land right by a person or legal entity. This SKPT only explains matters relating to the land parcel in question, especially those recorded in documents or records held at the local Land Office.

III. Result and Discussion

1. Regulation of Legal Protection to Holders of Land Rights

Acknowledgement Letter in Land Registration

In individualist countries where inviolable individual rights are recognised, land registration is the sacrosanct backbone of such rights. The land registry really functions to be able to guarantee one's land rights.

A good land administration system will be able to provide security of use for the owner. It can encourage or increase tax collection, increase use as credit collateral, improve land market supervision, protect state land, reduce land disputes, and can even facilitate rural land reform that is being and will be implemented in a country. Improves urban planning and infrastructure development, supports quality environmental management and can provide good land statistics. The overall benefits of land administration have, in fact, become a programme of land registry work from Perserikatan Bangsa-Bangsa (*United Nations*) as outlined by the 1996 Land Administration Guidelines. The existence of good land administration can also create good land information, which will even facilitate the structuring of land as desired by the geographical system developed by land registration.

The use of a negative publicity stelsel (with a positive element) shows that the concept of legal protection for HAT holders has been neglected, which can be seen from the absence of accountability for the results of the HAT certificate product. The liability contained in the negative publicity stelsel is on the ambtenaar official. The change from a negative publicity stelsel to a negative

publicity stelsel (with a positive element) means that the responsibility is no longer with the ambtenaar official, so that in terms of legal review the use of this negative publicity stelsel (with a positive element) has not fulfilled the elements of application and implementation of the law. The concept of legal protection of HAT holders cannot be separated from the issue of justice in the implementation of the law itself. Gustav Radbruch argues that there are three basic values to be pursued and need serious attention from law implementers, namely the value of legal justice, legal certainty and legal expediency, so that with the choice of negative stelsel (with a positive element), the three basic values themselves cannot be achieved.

The objectives of land law policy on the choice of negative publicity stelsel (with positive elements) are closely related to the objectives of the land law system itself, namely the creation of a just, prosperous and prosperous society, therefore the choice of using the land law system on the negative publicity stelsel (with positive elements) should be oriented towards the basic values of law, namely to realise order and order, peace and justice.¹¹

2. Bureaucracy and Public Service System of the National Land Agency

a. Land Ownership Rights

Land rights acquired from the state consist of Hak Milik, Guna Usaha, Hak Guna Bangunan, Hak Pakai and Hak Pengelolaan. Each right has its own characteristics and all must be registered in accordance with applicable laws and regulations. According

¹¹ Soediman Kartchadiprodja, *Pancasila Sebagai Pandangan Hidup Bangsa Indonesia*, diktat kuliah PDIH, Bandung, 2009, hlm xix.

to Pasal 20 UUPA, The right of ownership is the hereditary, strongest and fullest right that people can have to land. Property rights can be transferred and transferred to other parties. One of the specificities of Hak Milik is that it is not limited by time and is granted for an unlimited period of time, namely as long as this property right is still recognised in the framework of the enactment of the UUPA.¹²

As is known, in the concept of civil law, land ownership rights are legal ownership relationships that are essentially recognised, upheld, respected, and cannot be contested by anyone. Property rights are a source of life and livelihood for their owners, therefore people who have legal rights must get protection by the state. Property rights are a right that has the highest level of ownership relationship compared to other ownership rights. The owner's land relationship gives rise to rights and obligations as well as authority over the land, broadly said by Lisa Whitehouse: 'property is basic to the social welfare, people seek it, nations war it, and no one can do without it'.

b. State's Right of Control over Land

Theoretical understanding of state power over natural resources (earth, water and space), sourced from the people known as the rights of the nation The State is seen as an organisation that has the character of a public institution, so that to him is given the authority or power to regulate, manage, maintain supervise the use of all potential

⁹ Kecuali ketentuan Pasal 27 UUPA menjelaskan bahwa Hak Milik itu hapus apabila: Tanahnya jatuh kepada negara: 1. Karena pencabutan hak berdasarkan (Pasal 18 UUPA), 2. Karena penyerahan dengan sukarela oleh pemiliknya, 3.

resources within its territory intensively, but not as the owner, because the owner is the Indonesian Nation. As for the link between the right of state control and the goal of the greatest prosperity of the people, it gives birth to the obligation of the State to regulate:¹³

- 11 a. All forms of utilisation (of land and water) and the results obtained (natural resources), must significantly increase the prosperity and welfare of the community;
- b. Protect and guarantee all rights of the people contained in or on the earth, water and certain natural resources that can be directly produced or directly enjoyed by the people;
- c. Prevent any action from any party that would cause the people to be deprived of the opportunity or lose their right to enjoy natural resources.

Definition of the State's Right of Control over land. In a limited way, this explanation can be found Undang-Undang Pokok Agraria (UUPA). Pasal 1 UUPA It is mentioned that:

- 8 a. The entire territory of Indonesia is the unitary homeland of all the people of Indonesia, who have united as the Indonesian nation;
- b. All earth, water and airspace, including the natural resources contained therein within the territory of the Republic of Indonesia, as a Gift of God Almighty, are the earth, water and airspace of the Indonesian nation and constitute national wealth.

Karena diterlantarkan, 4. Karena ketentuan Pasal 21 ayat (3) dan Pasal 26 ayat (2); Tanahnya musnah.

¹³ Firman Muntaqo, *Karakter Kebijakan hukum pertanahan Era orde Baru dan Era Reformasi*, Badan Penerbit Undip, Semarang, Cetakan 1, Januari 2010. hlm 71-72.

Regulations on property rights, sovereign rights, and state rights to land have a close relationship with efforts to realise agrarian reform. The following are some of the relationships between these regulations and agrarian reform efforts:

1. **Title Regulations:** Land title regulations regulate the rights of individuals or legal entities over land, which can be in the form of property rights, building use rights, or use rights. In the context of agrarian reform, title regulations can be used to distribute land more equitably to smallholders or communities that need land for their livelihoods. Agrarian reform can involve land ownership from large owners or large institutions to smallholders or communities in need;
2. **Right to Use Regulations:** Regulation of the right to use land regulates how land can be used or utilised by landowners or other parties. In the context of agrarian reform, this regulation can be used to ensure that land distributed to smallholders or communities that use it is actually utilised productively and sustainably to improve their welfare.
3. **State Rights Regulation:** Regulation of state rights to land sets out the rights and obligations of the state in regulating land and other natural resources. In the context of agrarian reform, these regulations can be used to allocate state land to smallholders or communities that need land for their livelihoods. This can be done through land redistribution programmes or the establishment of agrarian areas managed by the state for the benefit of the community.

3. Regulation of Land Registration Implementation in Realising Agrarian Reform

a. Measurement

The provisions in the Presidential Regulation on the organisation of BPN are an improvement with the establishment of a new Deputy for Surveying, Measurement and Mapping. The activities of this deputyship are specifically to support BPN activities, especially activities to provide basic maps and thematic maps as well as a network of technical base points in land services at BPN or other agencies that require them.

In principle, the Deputy for Survey, Measurement and Mapping does not carry out cadastral measurements because this authority is the authority of the Deputy in charge of Land Registration. Cadastral measurement activities are measurements related to land rights, especially for the measurement of land parcels which are then mapped on the registration map and recorded in the land register. these activities are intended to accelerate the preparation of land tenure data. The implementation of land rights mapping activities, then the creation of a land register as stipulated in pasal 21 PP 24/1997 This is (1) Fields or parcels of land that have been mapped or registration numbers affixed to the registration map are recorded in the land register (2) The form, content, method of filling, storage and maintenance of the land register shall be regulated by the Minister.

b. Mapping and Recording

The activity of mapping and bookkeeping of land which is a follow-up activity to the measurement of land parcels is very necessary in order to create certainty of rights and orderly land administration. For this reason, it is necessary to hold bookkeeping to ensure orderly administration as stipulated in the law pasal 23, PP. 24/1997, namely that for the purpose of registering rights, a new land right is proven by:

1. Determination of the granting of rights from the official authorised to grant the rights concerned in accordance with the applicable provisions if the granting of rights originates from State land or management rights land;
2. Original evidence of the PPAT deed containing the granting of the right by the holder of the hak milik to the recipient of the right in question in the case of a right to use a building and a right of use on the land of a hak milik;
 - a) management rights are evidenced by the determination of the granting of management rights by the authorised officer;
 - b) waqf land evidenced by a deed of pledge of waqf;
 - c) hak milik atas satuan rumah susun evidenced by a deed of separation;
 - d) granting of mortgage rights is evidenced by a deed of granting of mortgage rights.

Land parcels that have been measured regarding their location and boundaries are mapped or entered (recorded) into a registration map or mapping activity and the land parcels are recorded in a

list called a land register. The land parcels in the land register are arranged based on sequential numbers, namely nomor identitas bidang (NIB) which is the single identity number of a land parcel. Included in the land registry is who controls or owns the land as well as the origin or status of the land such as customary land, state land or land that already has a land right including data regarding penguasaan, pemilikan, penggunaan dan pemanfaatan tanah which is abbreviated as P4T. If the data of the registration map and land registry is complete, it is expected that land services can be carried out faster and more certainty of rights and no longer need a letter from the head of the village or village head regarding girik, petuk and others which are actually proof of tax payment, which at this time the activities of administering girik and petuk are in principle no longer carried out. Measuring, mapping and bookkeeping of land, also known as physical cadastral activities, are activities to obtain initial data that are needed for services in the land sector.

4. Land Law Policy on the Land Registration System

In the context of land redistribution, the government is obliged to supervise every person and legal entity that has a land right. An example is the need for supervision of agricultural land, where the owner is using extortion methods. Maintaining the land, including increasing its fertility and preventing its destruction is the obligation of every person, legal entity or agency that has a legal relationship with the land, with due regard to the economically weak. This includes guntai land (Absentee), then the government is obliged to supervise.

Absentee land is agricultural land owned by individuals and families where the agricultural land is located outside the Kecamatan area where the landowner is domiciled. Absentee land ownership is not permitted. If there has been a transfer of rights that results in absentee land ownership, then within six months the land must be transferred back to the person domiciled in the sub-district where the land is located, with some exceptions, namely if the sub-district where the land is located is directly adjacent to the sub-district where the land owner is domiciled, then the granting of absentee land rights can be carried out, or retired civil servants can be given as long as they can manage the absentee land. This concept is intended to ensure that the utilisation of agricultural land is carried out in accordance with its designation, where agricultural land is used to support food self-sufficiency by the state.

The implementation of land registration practices, the government is obliged to implement the concept of land redistribution by taking into account socio-cultural values. Land redistribution is one of the policies of Land Reform. Objects of land redistribution include maximum surplus lands, former partisan lands, and in some places free State lands that have been cultivated by agricultural land residents are required to work or cultivate themselves actively, by preventing and not required by the Government for certain purposes or purposes. The recipients of land redistribution objects are cultivators recognised by the local community. Land redistribution can be implemented by the government through land consolidation, which is a rearrangement of land tenure and ownership, from an irregular form to an orderly, neat, efficient and optimal form.

There are two kinds of land consolidation objects, namely agricultural land and urban settlement land.

The framework of legal implementation with regard to achieving the objectives of the use, control, ownership and utilisation of HAT, these values give birth to basic principles that can be contained in legislation and government policies. The basic principles in the use, control, ownership and utilisation of HAT, among others:

- a. Trust is a principle derived from the teachings of the religion adhered to by each Indonesian citizen. This principle is the main foundation in both owning and utilising land. Therefore, every legislation (especially those relating to the use, control, ownership and utilisation of HAT) is expected to use the principles of trust and religious values;
- b. Balance is a principle that pays attention to the relationship between individuals who own or utilise land with other parties or the public interest with the State. This relationship is caused by a harmonious and balanced relationship between various interests;
- c. Maintaining and improving the quality of land.

Which explanation shows that in the implementation of land law policies, especially the application of the land registration stelsel in the BPN's bureaucratic system and public services, as a public asset whose function depends on the commitment of the parties concerned, social capital is the basis for managing the public interest. Therefore, it should be underlined that the social capital that needs to be developed is not only in the government domain, but also in the community domain. Therefore, the key to

social capital mobility is the rearrangement of the interaction between the government and the community, which means that the focus of attention is not on government, but on governance.

IV. Conclusion and Suggestion

Conclusion:

Land registration regulations in realising agrarian reform are currently not yet equitable, where there are still many agrarian disputes, conflicts and land cases encountered, the most prominent of which are disputes over land tenure and ownership. The negative publicity stelsel (with a positive element) has encouraged a centralised bureaucracy, which is because in the land registration system there is no clear accountability for the product of land certificates as a result of the implementation of registration. This lack of accountability has fostered a BPN bureaucratic culture that is stuck in the development of a vertical rather than horizontal culture (a culture that is more orientated towards the public interest). The centralisation of the BPN bureaucracy has led to the proliferation of pathologies in the form of various acts of power deviation, which has led to deviations in the principles of the land registration system. Land law policy on the negative publicity stelsel (positive element) in the land registration system has not shown the achievement of good services in the bureaucratic system and land public services in Indonesia. As democracy develops in Indonesia, the growing dissatisfaction with the negative publicity stelsel (with a positive element in the bureaucratic system and public services of the BPN) has progressively increased Freedom of opinion and freedom of

information about land between countries and between nations is absolutely inevitable, where civil servants (BPN employees) are the figures who are considered the most informed on most public discourse will be able to make an effective contribution to the formation of public policy (land law policy is no exception).

Reconstruction of Land Registration Policy Based on Justice Values. In line with progressive legal thinking, reconstructing land law policy requires a religious approach. Reconstruction Pasal 1 PP Number 18 tahun 2021, Land registration is a series of activities carried out by the Government continuously, continuously and regularly, including collecting, processing, bookkeeping, and presenting and maintaining physical data and juridical data from customary land issued by the village can be used in land registration. Reconstruction Pasal 97 Peraturan Pemerintah Republik Indonesia Number 18 Tahun 2021 Regarding Management Rights, Land Rights, Flat Housing Units, and Land Registration, it states that land certificates, compensation certificates, village certificates, and other similar documents intended as information on the control and ownership of land issued by the head of the village / sub-district head can only be used as instructions in the context of Land Registration. With the elimination of the word only, it means that the proof of the tenure letter and / or information can be processed for land registration at the BPN. Reconstruction Pasal 97 Peraturan Pemerintah Republik Indonesia Number 18 Tahun 2021 Regarding Management Rights, Land Rights, Flat Housing Units, and Land Registration, it states that land certificates, compensation certificates, village certificates, and other similar documents

1 intended as information on the control and ownership of land issued by the head of the village / sub-district head can only be used as instructions in the context of Land Registration. With the elimination of the word only, it means that the proof of the tenure letter and / or information can be processed for land registration at the BPN.

Suggestion:

5 Land registration needs to be carried out continuously and continuously on all land parcels in the village / kelurahan in a complete manner to create an orderly land throughout the territory of the Republic of Indonesia, the office ATR/BPN The Land Office provides legal counselling on Land Law, especially customary Land Registration to the community so that people increasingly understand the importance of land registration and the ATR / BPN Land Office increases the workforce in the office, both field staff and administrative staff so that with the increase in workers the process of converting property rights to land can run faster and increase. As well as updating the old system or methods used in the current BPN so as not to be left behind by the rapid pace of information technology and communication in the global world. Likewise with the registration system and land data in Indonesia, the existence of a government policy on customary land registration must indeed be appreciated by the community and must be supported.

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Ketentuan Pasal 27 UUPA menjelaskan bahwa Hak Milik itu hapus apabila: Tanahnya jatuh kepada negara: 1. Karena pencabutan hak berdasarkan (Pasal 18 UUPA), 2. Karena penyerahan dengan sukarela oleh pemiliknya, 3. Karena diterlantarkan, 4. Karena ketentuan Pasal 21 ayat (3) dan Pasal 26 ayat (2); Tanahnya musnah.

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