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## The Existence of Publicity Principles in Complete Systematic Land Registration

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### Abstract

This study aims to analyse the legal certainty of land rights certificates through the complete systematic land registration program regulated in Permen ATR / BPN No.6 / 2018. The issues examined include the legal certainty of land rights certificates issued based on Permen ATR / BPN No.6 / 2018 and legal protection of certificates issued under Permen ATR / BPN No.6 / 2018 for holders of certificates of land rights. This study uses normative legal research. The data was primary and secondary legal materials related to land registration. The results of the study are associated with legal objectives, then Permen ATR / BPN No. 6/1997 provides great advantages and can create an element of justice by issuing certificates throughout the community, so that legal certainty is given but it becomes weak due to disharmony between the two rules. So that applies the legal principle of the *lex superiori derogat legi inferiori*. The lower provisions are null and void and have no binding legal force as a result, land rights certificates issued based on Permen ATR / BPN No.6 / 2018 do not have legal power. In order to achieve legal certainty and protection, the provisions of Article 24 paragraph (2) Permen ATR / BPN No.6 / 2018 is adjusted to Article 26 paragraph (1) PP No. 24/1997 or the rules regarding PTSL are made in laws and regulations of the same level or higher than PP No.24 / 1997.

**Keywords:** Complete Systematic Land Registration; Certificate of Land Rights; Legal Certainty; Legal Protection

### 1. INTRODUCTION

Provision of legal certainty of land rights for all people is one of the main objectives in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (State Gazette of the Republic of Indonesia of 1960 Number 104, Supplement to the State Gazette of the Republic of Indonesia Number 2043) (hereinafter referred to as UUPA). The Basic Agrarian Law instructs the government to hold land registration throughout the territory of the Republic of

Indonesia which is *rechtskadaster*, means that guarantee the legal certainty and certainty of their rights.

Land registration throughout the territory of the Republic of Indonesia is carried out to provide legal certainty, as determined in Article 19 of the UUPA. Furthermore, in accordance with Article 19 paragraph (1) of the UUPA a Government Regulation Number 10 of 1961 concerning Land Registration is issued (State Gazette of the Republic of Indonesia of 1961

Number 28, Supplement to State Gazette of the Republic of Indonesia Number 2171) (hereinafter referred to as PP No. 10 / 1961) as an implementation provision that specifically regulates land registration. The land registration remains within the framework and principles contained in Article 19 of the UUPA (Lubis & Lubis, 2008).

However, for more than 37 years in the implementation of the UUPA, land registration was based on PP No. 10/1991 only register as many as 16.5 million plots of land or only 30% (thirty percent) of the plots of land estimated to be 55 million plots of land in the entire territory of the Republic of Indonesia. Therefore, PP No. 10/1961 is deemed no longer sufficient, so a revision was made with the issuance of Government Regulation Number 24 of 1997 concerning Land Registration (State Gazette of the Republic of Indonesia of 1997 Number 59, Supplement to the State Gazette of the Republic of Indonesia Number 3696) (hereinafter referred to as PP No. 24/1997) (Lubis & Lubis, 2008)

The first land registration activity regulated in PP No. 24/1997 is implemented in two ways, systematically and sporadically. Systematic land registration is the activity of land registration for the first time carried out simultaneously which includes all objects of land registration that have not been registered in the territory or territory of a village. Meanwhile, sporadic land registration is the activity of land registration for the first time concerning one or several objects of land registration in the territory or parts of a village or a certain area individually or in bulk.

Further arrangements regarding land registration activities both systematically and sporadically are set forth in the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency Number 3 of 1997 concerning Provisions for Implementing Government Regulation Number 24 of 1997 concerning Land Registration (hereinafter referred to as Perkaban No. 3 / 1997). However, in the provisions of PP No. 24/1997 *jo* PMNA / KBPN No. 3/1997 was also felt not to be

maximal. Of 126 million land parcels in Indonesia, only 46 million have been registered, this means that there are 80 million land parcels that have not been registered (Saut & Jokowi, n.d.). So that the remaining 80 million parcels of land are the targets in the National Medium-Term Development Plan (hereinafter referred to as the RPJMN) established through Presidential Regulation Number 2 of 2015 concerning the National Medium-Term Development Plan 2015-2019 (State Gazette of the Republic of Indonesia Year 2015 Number 3) (hereinafter referred to as Perpres No. 2/2015).

The latest program currently being implemented by the government is in accordance with the demands of the RPJMN, namely that in 2025 all land in the territory of the Republic of Indonesia has been registered. The Ministry of Agrarian Affairs and Spatial Planning / National Land Agency conducts a Systematic Complete Land Registration program (hereinafter referred to as PTSL). PTSL is a land registration activity that is carried out simultaneously for all objects of land registration in the entire territory of the Republic of Indonesia in one village or other name of the same level, which includes the collection and determination of the truth of physical and juridical data concerning one or several land registration objects for registration purposes. Under the PTSL program, the Ministry of Agriculture and Spatial Planning / National Land Agency targets 126 million land parcels in Indonesia to be registered and fully certified by 2025 (Purbaya, 2017).

The regulation concerning PTSL was first issued by the Minister of Agrarian Affairs and Spatial Planning as outlined in the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 35 Year 2016 concerning the Acceleration of the Implementation of Systematic Land Registration Complete (hereinafter referred to as *Permen ATR / KBPN* No. 35/2016). The rules regarding PTSL have been revised four times with *Permen ATR // KBPN* No. 35/2016,

amended by Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 1 of 2017 concerning Amendment to Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 35 of 2016 concerning the Acceleration of Systematic Land Registration Implementation Complete, and refined with Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 12 of 2017 concerning Complete Systematic Land Registration Acceleration. The latest amendment was made with the issuance of Presidential Instruction Number 2 of 2017 which requires a change in regulation regarding PTSL, then the rules regarding PTSL are amended by Minister of Agrarian and Spatial Regulation / Head of National Land Agency Number 6 of 2018 concerning Complete Systematic Land Registration (hereinafter in writing called Permen ATR / BPN No. 6/2018).

PTSL activities are expected to increase the guarantee of legal certainty. One of the issues regarding guaranteed legal certainty in PTSL is the principle of publicity. The principle of publicity has led to differences in regulation between the provisions in PP No. 24/1997 with the provisions in Permen ATR / KBPN No. 6/2018, which is the principle of publicity in PP No. 24/1997 regulated in Article 26 paragraph (1) specifies:

“The list of contents as referred to in Article 25 paragraph (2) along with maps of the relevant parcels or plots as a result of measurements as referred to in Article 20 paragraph (1) shall be announced for 30 (thirty) days in systematic land registration or 60 (six) twenty) days in sporadic land registration to provide an opportunity for interested parties to submit an objection.”

The principle of publicity in Article 24 paragraph (2) Permen ATR / KBPN No. 6/2018, namely by making an announcement of juridical data and

physical data for a land registration application for the first time. Article 24 paragraph (2) Permen ATR / KBPN No. 6/2018 determines:

“To fulfill the principle of publicity in proving land ownership, juridical data and physical data on plots of land and maps of plots of land are announced using the Physical Data and Juridical Data Announcement form (DI 201B) for 14 calendar days at the PTSL Adjudication Committee Office and Village Head Office”

The regulation of the principle of publicity between the provisions in the two rules can provide a potential for future disputes, because in principle the lower regulation must not conflict with the higher regulation as stipulated in the provisions of Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Laws and Regulations (State Gazette of the Republic of Indonesia of 2011 Number 82, Supplement to the State Gazette of the Republic of Indonesia Number 5234) (hereinafter referred to as Law No. 12/2011). So if there is a disharmony between laws and regulations it can cause uncertainty and legal protection obtained, namely the product of Permen ATR / BPN No. 6/2018 i.e. the certificate of land rights does not have a guarantee of legal certainty and legal protection for holders of land rights whose names are listed in the certificate.

Based on the description, as already mentioned above, this research aims to discuss the legal certainty of a certificate of land rights issued based on Permen ATR / BPN No. 6/2018 and the legal protection for right holders of certificates issued based on Permen ATR / BPN No. 6/2018.

## **2. METHOD**

This study was designed in normative legal research that examines the law from an internal perspective with the object of research is the legal norm (Dianta, 2016). The type of normative legal research was chosen because this study outlines the problems for further discussed based on legal theories and then related to the

applicable laws and regulations (Soekanto & Mahmuji, 1955). Normative legal research used in this study due to the problem in the aspect of legal norms, namely the existence of norm conflicts that occurred between Article 26 paragraph (1) PP No. 24/1997 with Article 24 Permen ATR / BPN No. 6/2018 related to the issue of announcement, where an announcement is needed to fulfill the principle of publicity in proving land ownership. Normative legal research is conducted by examining primary and secondary legal materials related to land registration.

### **3. RESULTS AND DISCUSSION**

#### ***Legal Certainty Certificate of Land Rights Issued Based on Permen ATR / BPN No. 6/2018***

Land registration in Indonesia consists of two activities, namely land registration for the first time and maintenance of land registration data. The activity of land registration for the first time means that the land parcels and rights holders referred to for the first time are recorded in the registration book, either as the first ownership or since ownership has been held down or as the last owner in which the land parcels were obtained from the transfer of rights in the form of purchase, grants, and so forth. Provisions regarding land registration for the first time are regulated in PP No. 24/1997, where land registration activities are held for the first time, covering the collection and processing of physical data, verification of rights and bookkeeping, issuance of certificates, presentation of physical and juridical data, and storing public lists and documents.

Land registration activities as described have been done in 2 (two) ways, namely systematic and sporadic land registration. In PP No. 24/1997, systematic land registration is the activity of land registration for the first time carried out simultaneously which includes all objects of land registration that have not been registered in the territory or part of a village (Article 1 number 10 PP No.24 / 1997). While sporadic land registration is the activity of land registration for the first time

regarding one or several objects of land registration in the territory or parts of a village individually or in bulk (Article 1 number 11 PP No. 24/1997).

To accelerate the systematic implementation of land registration, the government established a Systematic Complete Land Registration program or PTSL. In 2018, for the acceleration of PTSL activities, the President of the Republic of Indonesia signed Presidential Instruction (Inpres) No. 2 of 2018 concerning the Acceleration of Complete Systematic Land Registration in the Entire Territory of the Republic of Indonesia (hereinafter referred to as Inpres No. 2/2018). This Presidential Instruction is addressed to several ministries related to land, one of which is addressed to the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency.

Through Presidential Instruction No. 2/2018 a new PTSL regulation was issued in Permen ATR / BPN No. 6/2018, which in the regulation has shortened the announcement time of systematic land registration as regulated in PP No.24 / 1997. According to Article 26 paragraph (1) PP No. 24/1997 mentioned:

"The list of contents as referred to in Article 25 paragraph (2) along with maps of the relevant parcels or plots as a result of measurements as referred to in Article 20 paragraph (1) shall be announced for 30 days in systematic land registration or 60 days in sporadic land registration to provide an opportunity for interested parties to submit an objection."

While article 24 paragraph (2) Permen ATR/BPN No. 6/2018 mentioned:

"To fulfill the principle of publicity in proving land ownership, juridical data and physical data on plots of land and maps of plots of land are announced using the Physical Data and Juridical Data Announcement form (DI 201B) for 14 (fourteen) calendar days at the PTSL Adjudication Committee Office and Village Head's Office."

The difference in time of the announcement is clearly seen that the systematic announcement of land registration in PP No. 24/1997 was held for 30 days, while the announcement in Permen ATR / BPN No. 6/2018 is shortened to 14 days. This shortening of time creates a conflicting norm between the two regulations that causes vertical disharmony in the fulfillment of the principle of publicity itself. Where the principle of publicity in the registration of land itself is intended to provide juridical data about who is the subject of his rights, what is the name of the right to land, as well as how the transition and encumbrance occurred (Mertokusumo, 1988). In PTSL itself, the fulfillment of the principle of publicity is intended so that all people know about the physical data and juridical data of land that has been registered either through sporadic or systematic registration, this is done with the aim of providing opportunities to other parties who object to immediately filing the objection, so before the registration of the land is recorded in the land book and issued in the form of a certificate it is hoped that no more parties will still object to the land registration. So that if there is a difference in the provisions of land registration with the provisions in PTSL on the principle of publicity, it can be questioned about the legal certainty of the certificate itself.

If examined further, regarding the announcement of 14 days in complete systematic land registration, if seen from the elements of its effectiveness, that the implementation of the acceleration is only legal in accordance with the Presidential Instruction which aims to obtain legal certainty of holders of land rights over the land under their control. It's just because the regulation regarding the acceleration is regulated by Ministerial Regulation, which when seen from the intersection of norms or hierarchy of laws and regulations according to Article 7 paragraph (1) of Law no. 12/2011 it is known that Government Regulation (PP) is under the Act / Government Regulation in Lieu of Law, while Ministerial Regulation as can be seen that there is no regulation regarding

ministerial regulations in the order of the laws. Ministerial Regulation is a regulation stipulated by the minister based on the material content in the context of carrying out certain affairs in government. The position of Ministerial Regulation itself is regulated in Article 8 paragraph (1) and paragraph (2) of Law no. 12/12.

Furthermore, the issuance of ATR / BPN Regulation No. 6/2018, deliberately designed, to provide certainty and legal protection for holders of land rights certificates, as well as PP No. 24/1997 which is also an order of Article 19 of the UUPA. So that the implementation of PTSL in the presence of Permen ATR / BPN No. 6/2018 seen from the purpose of the law it has fulfilled the elements of benefit and also justice, but seen from the disharmony of legal norms between Article 26 paragraph (1) PP No. 24/1997 with Article 24 paragraph (2) Permen ATR / BPN No. 6/2018 it is felt that there are still doubts about the certainty of the law itself, that the law with one another is not contradictory.

In addition, if there is a lawsuit against the land rights in the future both the lawsuit regarding physical data and juridical data, it cannot be separated from the implementation of the principle of publicity which fulfillment of the principle of publicity aims to provide opportunities for those who object to object. With the announcement of 30 days in Article 26 paragraph (1) PP No. 24/1997 to date, there are still complaints over objections to land rights certificates and can be a great opportunity if the time period is shortened and regulated in regulations whose position is weaker than the PP. In resolving land cases, a judge may decide in 2 ways namely the judge will ignore the contradictions in Article 26 paragraph (1) PP No. 24/1997 with Article 24 paragraph (2) Permen ATR / BPN No. 6/2018, seen from the achievement of elements of expediency and justice in the implementation of PTSL and the judge can decide not to ignore the contradictions despite the achievement of maximum benefits and a sense of justice for the

community, so there is still doubt or uncertainty.

From the analysis above, if reviewed from its own legal purpose, the regulation regarding PTSL in Permen ATR / BPN No. 6/2018 was formed because of an order from the UUPA for the interest of the people, where PTSL itself was made with the maximum benefit for the people that is to achieve legal certainty by registering all land in Indonesia. So that it will provide a sense of justice for all the people of Indonesia and be able to enjoy its great benefits equally regardless of the degree of ability. However, due to the acceleration of the announcement period which must be carried out for the fulfillment of the principle of publicity, the announcement of 30 days as stipulated in PP No. 24/1997 is shortened to 14 days as stipulated in Permen ATR / BPN No. 6/2018, in terms of the theory of norm gap, it looks as if there is disharmony because the ministerial regulation is not in the hierarchy of statutory regulations so that it makes the PP position higher. Therefore, judging from the hierarchy of statutory regulations, PP No. 24/1997 has a higher position (*lex superior*) compared to Permen ATR / BPN No. 6/2018 which has a lower position (*lex inferior*). So with the fulfillment of the legal goals of expediency and justice but there is still a disharmony of norms between the two regulations making the ATR / BPN Regulation No. 6/2018 has legal certainty but still has weaknesses because it is governed by regulations that are lower than PP.

### ***Legal Protection for Rightsholders of Certificates Issued Based on ATR / BPN Regulation No. 6/2018***

Means of legal protection can be divided into two namely preventive legal protection and repressive legal protection. Preventive legal protection is to provide an opportunity for the people to submit objections (*inspraak*) to their opinions before a government decision gets a definitive form. This legal protection aims to prevent disputes from occurring and is of great significance to government actions

based on freedom of action (Hadjon, 1998), While repressive legal protection is legal protection that functions to resolve in the event of a dispute.

Legal protection is very important for every certificate holder of land rights. Where the state guarantees legal certainty and protection for owners whose names are listed in land rights certificates. Legal protection for holders of land rights is intended so that holders of land rights are protected by their rights. The concept of understanding legal protection as outlined by Philipus M. Hadjon written in Dutch, that is "*rechtsbescherming van de burgers tegen de overheid*" and in English written "legal protection of the individual in relation to acts of administrative authorities" (Hadjon, 1998). Legal protection as an illustration of the legal function in which law can provide justice, order, certainty, usefulness, peace, peace for all the interests of humans in society. Every person as a citizen has human rights, these rights include the right to safety, security and legal protection.

Related to the protection for the owner whose name is listed in the certificate of land rights, actually has been regulated in the UUPA. The principle of legal protection can be found in Article 18 of the UUPA, i.e.:

"In the public interest, including the interests of the nation and state and the common interests of the people, land rights can be revoked by providing appropriate compensation and in a manner regulated by law"

Conflicts of norms that occur in the provisions of Article 26 paragraph (1) PP No. 24/1997 with Article 24 paragraph (2) Permen ATR / BPN No. 6/2018, preventive legal protection cannot be achieved, and if preventive legal protection is not achieved as well as repressive legal protection. If reviewed from the rules of establishing legislation, the position of PP No. 24/1997 higher than Permen ATR / BPN No. 6/2018, whereas in a hierarchy of laws and regulations that lower regulations must not contradict higher regulations. If related to disharmony between Article 24 paragraph (1) PP No. 24/1997 with Article 24

paragraph (2) Permen ATR / BPN No. 6/2018, then the application of ATR / BPN Regulation No. 6/2018 becomes null and void. The consequence of null and void is that the ministerial regulation makes all certificates of land rights issued through PTSL based on the ministerial regulation do not have strong legal force, so there is no legal protection for holders of certificates of land rights. With these consequences, we need a protection for the owner of land rights. Therefore, the state should protect the holder of the certificate of land rights because of the good faith of the holder and the state's decision to issue the certificate as proof of land rights. So that the protection that can be given to Indonesian citizens against ownership certificates issued through PTSL based on Permen ATR / BPN No. 6/2018, preventive legal protection can be given. Where prevention can be carried out in the event of disputes and encourage the government to be more careful in making decisions relating to PTSL itself and the people can submit objections or be asked for their opinions regarding the decision plan.

#### **4. CONCLUSION**

Based on research result that has been already mentioned above, then can be concluded that firstly, disharmony between regulations regarding the period of announcement in the provisions of Article 26 paragraph (1) PP No. 24/1997 with Article 24 paragraph (2) Permen ATR / BPN No. 6/2018 when viewed from the objective of the law, it has fulfilled the elements of maximum benefit and justice for all Indonesian people, but in the element of legal certainty it is still in doubt. When viewed from the hierarchy of laws and regulations in Law No.12 / 2011, PP No.24 / 1997 has a higher position in the hierarchical structure of legislation compared to Permen ATR / BPN No.6 / 2018. Indeed, the rules of Permen ATR / BPN No.6 / 2018 from their legal objectives have fulfilled legal certainty but the acceleration causes disharmony in the two rules which causes PTSL regulation has weaknesses. So when viewed from the

perspective of disharmony, applies the principle of the law of *lex superiori derogat legi inferiori* (a higher degree law overrides a lower degree law).

Secondly, viewed from the side of the disharmony norms and with the application of the legal principle of *lex superiori derogat legi inferiori* to resolve disharmony problems between laws and regulations, the lower provisions become null and void or must be canceled and do not have binding legal force. So that the legal product in the form of land rights certificates issued based on Permen ATR / BPN No. 6/2018 has weak legal power, so it does not have legal protection especially preventive legal protection for holders of land rights whose names are listed in the certificate. If there is no preventive legal protection, then automatically there is no repressive protection. Therefore, a legal protection is needed to protect the owner whose name is listed in the certificate of land rights issued based on the regulation of Permen ATR / BPN No. 6/2018.

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