

Collective land certification policy for improving good land governance

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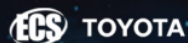
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Collective land certification policy for improving good land governance

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Abstract. The land is a very limited resource, so the right to land will cause problems if it is managed improperly. The research is a socio-juridical research and uses a descriptive method. The results show that collective land certification policy in Indonesia is an effort of the government to regulate land tenure and ownership in realizing fairness, benefit and legal certainty. However, its implementation is not undertaken in a planned and gradual manner so that the issuance of title deed in the mass land registration does not consider the formal and material validities of the land certificate. The implementation of state-funded mass land registration as an effort by the state to create fairness, benefit and legal certainty over land tenure and ownership needs to be implemented in a planned and gradual manner. The stage is the first year of research, for measuring in the second year and the issuance of a land titling certificate in the third year. The implementation of gradual and planned land registration will affect the quality of the title deed as issued because the issuance is undertaken by referring to the principle of good land governance.

1. Introduction

The land is a vital need for humankind. Clearly, the history of human civilization indicates interrelation between land and human beings in various forms such as economic, social, and cultural as well as international relations. One of the most important land governance legislations during the post-independence era was the Basic Agrarian Law (abbreviated as BAL), which was enacted in 1960 and later complemented by a number of other laws, regulations, and decrees. While the BAL was primarily aimed at unifying the different land laws into a single system, it conditionally recognized customary rights of rural communities [1].

In the economic aspect, land is an object that has value and can be a tool to improve the economic level of a person. In the social aspect, land is a place for people to socialize, a place for human to bind themselves in human relations. In the legal aspect, land is an object that can have a legal relation with humans and as a legal object that must be governed its ownership to create order in society. Hence, the land has a comprehensive and holistic position because its existence encompasses many aspects and cannot be separated from human life.



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Current land tenure and ownership gets much discussion both nationally and internationally because it is undeniable that every country has a need for land. Guarantees for the protection of land rights can be found in many legal instruments of international human rights. Several studies conducted by the United Nations provide conclusions about the importance of guarantee rights and protection in land tenure and ownership. In international discussion, land is linked to the development of economic, social and cultural rights. In many parts of the world such as Africa, Asia, and Latin America, vulnerable groups in both urban and rural areas have been targeted by structural discrimination practices that often use justification in the name of development.

The need to provide guarantees for access to land has gained portion in international discussions and international legal frameworks [2]. Several documents of international humanitarian law also explain the presence of right guarantee to land use, including those directly related to refugee issues as a result of the presence of internal and international conflicts during World War II. This provision also regulates restitution procedures, especially for property and ownership confiscated during the conflict [3].

The 1948 Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights has provided significant portion for discussion to explore explicitly land rights relations with other rights such as the right to adequate food fulfillment, the right to water, the right not to be evicted, and etc. Then, this discourse is confronted with the reality that land is a very limited resource so that the rights to land will cause problems if it is managed in a concept that is not based on the orderly and planned concepts and based on fairness, benefit and legal certainty. This is attempted to be implemented in Indonesia through various Indonesian government programs and funded by the state but in practice there are still many obstacles that require further study on the causes and solutions so that it is expected to provide a contribution of thought related to efforts to realize fairness, benefit and legal certainty in land governance in Indonesia and may serve as a reference or example for other countries to be applied properly of their respective countries.

5 Assessing a good land governance-based land tenure and ownership

Good governance is increasingly recognized as critical to effective development. Governments with a record of transparency, accountability and responsiveness are far more likely to attract investment, provide high-quality public services and manage resources more cost-effectively [4]. The arrangement of right to land in Indonesia demonstrates the recognition of the State of the right to land as a human right by granting rights of ownership and other rights. However, the rights are restricted by the arrangement of the land-social function. Thus, the arrangements of land ownership in Indonesia basically places individuals and public interests equally. The interest of the right holder shall not harm the interests of the peoples and vice versa that the interests of peoples shall not harm the interests of the right holder [5].

As an effort to grant land rights to the people of Indonesia, the government launched collective land certification policy through mass land registration which is called, *Pendaftaran Tanah Sistematis Lengkap* (abbreviated as PTSL) by targeting the granting of right to land of 5 (five) million plots of land in 1 fiscal year in 2017, 7 (seven) million plots of land in 1 fiscal year 2018 and 9 (nine) million plots of land in the fiscal year 2019. The implementation of this program is motivated by the government's political will to provide legal certainty of land rights so that land controlled and owned by the people really have a perfect proof and has the convenience to get access to capital from banks or other financial institutions.

Ideally, in the land registration in the framework of granting land ownership rights to the subjects of rights pay to consider the public interests of the land such as the prohibition to register the land which is a public and social facilities. Also, considering agricultural land to be registered its right is a plot of land which is actually managed by the party registering the right and the indicator to determine is the registering party domiciled in near the land being applied for. It is to prevent the neglecting of

the land and prevent the practice of profit sharing between landowners and smallholder who tend to be close to extortion. However, as it turns out into practice, the implementation of this PTSL project has not been fully within the ideal land tenure and ownership. In reality, as findings where the mass land registration especially those implemented in 2017 shows the conditions are far from the objectives of fairness, benefit and legal certainty.

The mass land registration in large quantities of land and very-short time targets without supported by adequate facilities, infrastructure and human resources have created enormous obstacles to the project. The author observes that the project of mass land registration is not based on careful planning that takes into account the capabilities of the implementers. Implementing agency of land registration in Indonesia have very limited human resources with a very-high volume of service so that with the mass land registration and very-short time target to cause the focus of the service is divided into 2 (two) namely the services of mass and individual land registrations are also limited by standard time. It causes the work to be carried out in a hurry that will impact on not making the quality of the certificate product as the main consideration but the speed of completion and achievement of the target amount and time. In addition, land registration policy has been arranged in various laws and regulations so that the implementation of land registration is really capable of realizing fairness, benefit and legal certainty. But its implementation it is not accompanied by good management so it will have an impact on efforts to achieve fairness, benefit and legal certainty.

Essentially, land registration is not only limited to issue a piece of proof of rights but issue proof of rights that contain the truth both the procedure and material. A proof of rights will have the force of law when it is issued in accordance with the procedure and contains the material truth and the exclusion of either or both of them will result in the issuance of a proof of right that will not be able to be retained even by a piece of a receipt. This keeps out the certificate of proof of rights with the purpose of land registration.

Good land governance is a discourse and as one of the world issues today. Various international meetings are held to discuss Good Land Governance and some indicators and principles of Good Land Governance have been put forward by various institutions in the world. International Federation of Surveyors put forward several indicators in good land governance, namely [6]:

- a) Land policy is in line with the principles of fairness and equity
- b) A variety of accepted and socially legitimate rights are legally recognized and recorded
- c) Land management and associated instruments (zoning and development control plans, conservation plans, etc.) are justified by externalities and undertaken in an efficient, transparent manner.
- d) Land administration agencies have clear mandates and operate transparently, cost effectively and sustainably
- e) Information provided by the land administration system is reliable, sufficient, and accessible at reasonable cost.
- f) Management, acquisition and disposal of public land follows clear procedures and is applied transparently
- g) Property valuation serves public and market needs and property taxation is clear and efficient in support of policy
- h) Judicial and non-judicial institutions are accessible with clear mandates and resolve disputes fairly and expeditiously.

Several principles as presented above in the view of the author is a principle that has not been detailed in providing an overview of land management because basically the discussion of land management is not just policy and policy but there are also other points that require the principles that underlie its implementation. The author sees that land arrangements need to be done in several forms, namely; land policy, land registration, land controlling, land redistribution, land consolidation and land dispute resolution.

Land administration is often perceived as one of the most corrupt sectors in public administration. Land itself, considered a primary source of wealth, often becomes the trading medium and motivation

for political issues, economic and power gains, and self-fulfilling interests. The need to ensure there is good governance in land administration is thus very important. A key theme in the land sector among development professionals, policy makers and academics, is how to address governance within land administration.

In order to realizing these principles, the implementation of mass land registration within the framework of regulating land tenure and ownership should be carried out through planned stages. This stage is related to an understanding of all aspects that will be related to the land registration activities. Clear planning in State-funded mass land registration will be able to create equitable land tenure and ownership arrangements and have legal certainty because with such planning we get preliminary mapping of land conditions in all regions of the country will be chosen to determine which part of the land may be issued a title deed, temporary title and not at all so that a collision condition between individual property rights and State assets, issuance of certificates on a dangerous geographical area, the issuance of certificates in certain areas, the issuance of certificates on land still in dispute may be avoided.

Prior to the mass land registration, it is necessary to conduct a preliminary activity in the form of comprehensive research on the ability of all implementing agencies from facilities, infrastructure, human resources, level and volume of services, the number of communities to be served, the geographical conditions of each region as a reference for determine how appropriate targets should be given to each of the land offices. Furthermore, all implementers should be equipped with the knowledge and understanding of the right working mechanism so that there are no errors in the implementation. This should be done in the first year of the program.

After knowing and understand based on an analysis of the data needed to support the implementation of mass land registration, the following year carried out measurement activities for all plots of land in areas where the certificate is issued in mass [7]. After measurement we able to identify the status of land that can be issued a certificate as proof of rights, which should be postponed its issuance and which cannot be published at all. By this staging activity, mass land registration can be implemented in a planned and directed manner that will have implications on the issuance of the proof of right that actually has legal power.

The issuance of certificates that do not pay attention to the formal and material truth will give a certificate that can be aborted at any time by another party and this will not only affect the individual but may affect investor confidence in Indonesia. Banking business actors will be highly burdened if the certificate that becomes the guarantee of the mortgage agreement later on must be canceled due to the wrong procedure or material untruth on the certificate. Similarly, infrastructure entrepreneurs will be reluctant to invest if the land they have paid and released does not have legal force and can be aborted by others.

Certificate as proof of right has an important role in accessing the banking that will help the community in capital but if the certificate issued does not have legal certainty then the access will be disrupted. The role of certificates on access to the banking is not only in Indonesia, it has also been demonstrated in several countries, among others in Ghana, where in this country the legal certainty of land affects access to credit from banks and investment players [8]. For this reason, land registration is an activity of regulating land tenure and ownership through the issuance of a certificate as proof of rights that contains formal and material truths so that the proof of rights can actually be proof that will provide fairness, benefit and legal certainty for the peoples.

3. Conclusion

The implementation of collective land certification policy through the PTSL project has not been fully within the ideal land tenure and ownership. The mass land registration, especially those implemented in 2017 shows the conditions are far from the objectives of fairness, benefit and legal certainty as desired. In fact, the mass land registration in large quantities of land and very-short time targets without supported by adequate facilities, infrastructure and human resources have created enormous obstacles to the project. The project of mass land registration is not based on careful planning that

takes into account the capabilities of the implementers. The implementing agency of land registration in Indonesia have very limited human resources with a very high volume of services. As a result, the issuance of the proof of rights in the mass land registration does not consider the formal and material truths of the certificates of right to land issued and more focused to achieve quantity target and period.

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