

IMPLEMENTATION OF THE PRINCIPLE OF PRUDENCE IN THE ARRANGEMENT OF LAND RIGHTS TRANSITION

Imam Azizul Furqan
Notary Program of Law Faculty
Sebelas Maret University, Surakarta, Indonesia
Email: furqonstpo@gmail.com

Lego Karjoko
Faculty of Law
Sebelas Maret University, Surakarta, Indonesia
Email: Legokarjoko@staff.uns.ac.id

Hari Purwadi
Faculty of Law
Sebelas Maret University, Surakarta, Indonesia
Email: hpurwadie@staff.uns.ac.id

ABSTRACT

The issuance of land rights certificates in the transfer of land rights due to buying and selling has not realized the desire and satisfaction of the community because there are still disputes over land rights, namely double certificates. The government has issued laws and regulations on land, but disputes regarding the transfer of land rights due to buying and selling are still occurring. This study aims to analyze how the form of implementation of the principle of prudence in the provisions of Law Number 5 of 1960, Government Regulation Number 24 of 1997, Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 3 of 1997, Government Regulation Number 18 of 2021. The research method used is a normative juridical research method using the basics of laws and regulations relevant to related issues. The results of the study show that the application of the principle of meticulousness in the provisions of the Laws and Regulations provides the proper implementation of the principle of meticulousness in the registration of the transfer of land rights, but the negative publication system applied in land registration in Indonesia is considered ineffective because there are still disputes in the transfer of land rights due to buying and selling, namely double certificates. The government in this case must conduct a review related to the publication system and the principle of meticulousness in laws and regulations as a guideline in the registration of the transfer of land rights so that when in practice it can provide a guarantee of legal certainty and provide a tangible manifestation of good governance as expected by Law Number 30 of 2014 and the principle of prudence is included in the group of General Principles of Good Governance.

Keywords: Principle of Precision, Land Rights Transition, Double Certificate

INTRODUCTION

Based on human life, soil is included in it, therefore for the survival of human beings it is important to say that it is important. Humans are expected to be able to utilize and manage one of the important things in life, namely land to provide a source of life and livelihood for humans. Based on the important role of the land in article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that the earth, water and natural resources contained in it are used for the greatest prosperity of the people. Going straight with the development of population growth, the development of all fields and the willingness to land that remains a cause of problems in the land sector to increase. The state has an obligation to provide legal certainty guarantees on land rights ownership rights for the community to avoid increasing land dispute problems that occur in the future.

Land certificates are a form of providing legal certainty to land rights owners. Land certificates are basically issued by the National Land Agency. The issuance of land certificates is carried out by the National Land Agency to provide physical evidence of legal and strong ownership if there are disputes or problems in the future. This is stated in article 32 of Government Regulation Number 24 of 1997 concerning Land Registration. Regarding the issuance of land certificates at this time, it still does not realize the desire and satisfaction of the community. Certificates issued by the National Land Agency are not uncommon to have disputes or problems, one of which is a dispute over a double certificate.

The issuance of double certificates carried out by the National Land Agency occurred because there were errors in the data that were not accurate and incomplete and also because the data from the land was wrong. A double certificate is a certificate that lists the same piece of land, which shows that there are two or more certificates, each containing unique data, to be used in defining a piece of land either covering part of the land or the entire plot of land (Chomzah, 2003). Regarding the problem of double certificates, there are several possible causes, namely the existence of an outside party who copies or reissues it. The capacity that can do this is the land office official himself. Looking at the problem of the double certificate dispute, landowners whose names are listed in the old land certificate often do not know that there is another person's name that has appeared. Land office officials even issue certificates without following the legal channels that should have been regulated based on laws and regulations. In addition, individuals who try to work on it for personal interests are often one of the causes. This is the question in the implementation of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, Government Regulation Number 24 of 1997 concerning Land Registration, Regulation of the Minister of Agrarian and Spatial Planning/Head of the

National Land Agency of the Republic of Indonesia Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration and Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats and Land Registration as a form of implementation of the principle of prudence.

Satjipto Rahardjo expressed his opinion that legal principles are referred to as the heart of legal regulations for two reasons. *First*, the principle of law is the broadest foundation for the birth of a legal regulation. It is intended that the legal regulations that have been made can eventually be restored to this principle. *Second*, the legal principle is the reason (*Ratio Legis*) for the birth of a legal regulation. The power of this principle will not be exhausted in giving birth to various legal regulations, but from the legal principle will derive a legal regulation. Meanwhile, Soedikno Mertokusumo said in his opinion that legal principles are not in concrete law, but principles are abstract basic thoughts or principles as a background in concrete regulations that exist and are behind in every legal system that is embodied in laws and regulations and judges' decisions which are in positive law and can be found with general characteristics or characteristics based on concrete regulations (Rosadi, 2010).

Legal principles do not have a direct working force, but legal principles influence the interpretation of rules. Because basically principles cannot be applied directly in a concrete event because legal principles are not a rule. This is because legal principles are too general or abstract to be said to be legal rules. Principles are basically often interpreted as principles, this happens because principles and principles have the same meaning. The two words are interpreted as the basis for a certain thing, where the two words have abstract properties.

Regarding this, it is in line with the existence of the principle of meticulousness that has been stated in Law Number 30 of 2014 concerning Government Administration. In general, the principle of meticulousness as a related foundation is the basis for thinking in acting with a careful and prudent attitude. The purpose of the principle of prudence is to improve the quality of government administration, agencies or officials who have the authority to exercise their authority must be based on laws and regulations and the General Principles of Good Governance. The General Principles of Good Governance is a principle that is used as the basis for the use of authority by government officials in giving decisions and actions in the administration of government, while the principle of prudence is one of the principles that must be applied in the administration of the state as stipulated in Law Number 30 of 2014 that the principle of prudence is included in the group of General Principles of Good Governance

It is undeniable that negligence still occurs when the relevant agency that has the authority to issue land rights certificates issues double certificates. This causes losses to the related community due to the lack of legal certainty provided by the government, especially related agencies. The double certificate that appears in the transfer of land rights due to buying and selling provides an important concern regarding the application of the provisions of Law Number 5 of 1960 concerning Basic Regulation on Agrarian Principles, Government Regulation No. 24 of 1997 concerning Land Registration, Regulation of the Minister of Agrarian and Spatial Planning/ Head of the National Land Agency of the Republic of Indonesia Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration and Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats and Land Registration as a form of implementation of the principle of prudence.

RESEARCH METHODS

The research method used in this study is a normative juridical research method using the basics of laws and regulations relevant to related issues. In this study, a qualitative normative juridical research method is used, namely in the form of research that refers to legal norms in laws and regulations as well as norms that are in life and develop in society. Based on the nature of this study, which uses an analytical descriptive research method, in this case the data analysis used is a qualitative approach to primary data and secondary data (Zainuddin, 2016). There are data sources that are owned by utilizing secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials sourced from *library research* using literature including laws and regulations, books, scientific works in the form of journals, articles and other sources that are still related to the problem.

This research is expected to make a positive contribution to the reform of agrarian law in Indonesia and provide useful guidance for land certificate holders, legal practitioners and related parties in resolving cases of double certificates due to buying and selling.

RESULTS AND DISCUSSION

The Liang Gie expressed his opinion that a principle is a general postulate that is expressed in general terms without providing a specific way related to the implementation that is implemented in a series of actions in order to be the right guide to the deed. Theoretically, legal principles are not legal rules, this is because legal principles cannot be applied directly to a concrete event by considering them as part of legal norms. Nevertheless, legal principles are still necessary in the formation of a law, because the law itself cannot be understood because of legal principles. Seeing the importance of legal principles in terms of the formation of laws and regulations, the functions of the principles include: 1) being a benchmark in the formulation and/or testing of legal norms; 2) to facilitate the proximity of understanding of the relevant law; 3) is a reflection of the civilization of society or nation towards the way of viewing behavior (Astawa & Na'a, 2012).

Legal principles are a means to the law so that it remains alive, grows and develops. The existence of legal principles provides law is not just a collection of rules, because the principles themselves contain ethical values and demands. B. Arief Sidharta stated that the legal principle is a surplus value, as a value, the function of the legal principle itself is: 1) it is a critical norm in assessing the quality of a legal rule which should be from the elaboration of the value; 2) is an auxiliary means of interpreting a relevant rule, namely by determining the scope of the application of the provisions of the relevant law (Rosadi, 2010) The principles of the formation of laws and regulations are a guideline or signpost in the formation of good laws and regulations. Burkhardt Krems conveyed the formation of laws and regulations or with the term *staatsliche rechtssetzung*, the formation of which involves: 1) the content of regulations; 2) the form and structure of regulations; 3) methods of regulation formation; 4)

procedures and processes for the formation of regulations. If you look at the above, the principles in the formation of state laws and regulations will include legal principles that are related to this (Indrati S, 2007).

The principle of meticulousness is the basis for a truth that is the basis of thinking and acting which is carried out with a careful and careful attitude and the principle of meticulousness has the purpose of anticipating and preventing from the beginning of a certain activity carried out by humans. Similarly, the principle of meticulousness in the transfer of land rights due to buying and selling, it is expected to provide legal guarantees to legal subjects who commit legal acts so that later legal certainty can be realized. The government in this case provides an important role regarding the rules that govern land law in Indonesia. The government followed up on its focus on Indonesian land law by issuing Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA) to regulate matters related to the earth, water and space, with the intention of providing legal certainty to land rights owners.

The UUPA is present in this case to provide prevention of disputes related to land in Indonesia. The dispute over double certificates in terms is one of the disputes that must be prevented in Indonesian land law. This research will focus more on discussing the dual certificates that emerged after the transfer of land rights. Based on Government Regulation Number 24 of 1997 stated in article 37 paragraph (1) that the transfer of land rights can be carried out on the basis of legal grounds of purchase, exchange, grant, income in the company and other legal acts of transfer of rights. The transfer of rights through buying and selling is one of the legal bases in transferring land rights. It is undeniable that double certificate land disputes still occur after the transfer of land rights due to buying and selling.

That we know that the presence of the UUPA in this case is one of them to provide prevention of land disputes. So as with the description above regarding the principle of thoroughness, how is the application carried out in Undnag-Law. Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles. Every citizen who holds land rights to register the land to avoid disputes or problems related to land rights in the future. Article 19 of the UUPA states that in all regions of the Republic of Indonesia land registration is held with the aim of providing a guarantee of legal certainty of land rights. Article 19 paragraph (2) states that land registration held by the government includes: a) mapping and land bookkeeping; b) registration of land rights and transfer of such rights; c) the provision of proof of rights, which is valid as a strong means of proof.

Looking at article 19 paragraph (2) letter b, it is stated "registration of land rights and transfer of these rights". That the article provides legal certainty to each land right holder in registering the transfer of land rights, this embodies the principle of meticulousness in terms of ensuring legal certainty for land rights owners in order to prevent later misappropriation of land rights owned. In line with that, in article 19 paragraph (2) letter c it is stated "the provision of letters of proof of rights, which apply as a strong means of proof". The article is also an implementation of the principle of meticulousness, this is considering that the end of the land registration process by granting a land certificate which is a strong means of proof becomes an act that underlies the principle of meticulousness in order to provide legal certainty to the owner of land rights and provide valid evidence in the form of a certificate. The granting of a land certificate in this case provides the result of the application of the principle of thoroughness, this is because the principle of thoroughness is carried out based on complete information and documents, therefore the granting of a land certificate as a strong sign of blindness is a document whose contents consist of complete information by the holder of the land certificate.

Article 19 of the Basic Law of Agraria (UUPA), which is an implementation of the principle of prudence, is also used as a basis for developing the principle of prudence in land registration in Indonesia in the form of a regulation that deepens the land registration process to provide legal certainty to the community. The rule is Government Regulation Number 24 of 1997 concerning land registration. As the author said in the introduction, principles will be the reason for the formation of a regulation whose own power will not be exhausted but will give birth to and derive various legal regulations. The formation of this regulation provides a more thorough application of the principle by forming special rules that regulate land registration in Indonesia, including the transfer of land rights due to buying and selling.

From the principle of meticulousness applied to Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles in the form of article 19 and developed again in the regulation, namely Government Regulation Number 24 of 1997 concerning Land Registration. This pays attention to the land registration process, including the registration of the transfer of land rights due to sale and purchase as stated in Government Regulation Number 24 of 1997 in articles 37 to 40. These articles that regulate the transfer of land rights in registration in Government Regulation Number 24 of 1997 explain the purpose of the transfer of land rights, the requirements for the transfer of rights in general and the period of submission of the required documents. Considering that the basis of the principle of meticulousness itself, namely complete information and documents, these articles show the implementation of the principle of meticulousness in Government Regulation Number 24 of 1997. The content and intent of these articles that convey the understanding, prohibition and appeal are used as one of the steps in obtaining complete information which will then become an important document.

Existence of Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 3 of 1997 concerning Provisions for the Implementation of Regulations Government Number 24 of 1997 concerning Land Registration (hereinafter referred to as PMA Number 3 of 1997) shows that when principles are the basis of rules that will not be exhausted and lower or give birth to new rules. The application of the principle of meticulousness in the registration of the transfer of land rights due to sale and purchase is contained in PMA Number 3 of 1997 which is more detailed in articles 94 to 106. These articles provide detailed explanations related to the transfer of land rights, one of which is due to buying and selling. The explanation in question includes the preservation of land registration data, juridical data is one of the objects. Juridical data explaining the status of the land parcel includes information about the right holder. In order to prevent the occurrence of disputes over double certificates, the data has an important role, therefore the author argues that the implementation of the principle of meticulousness is contained in PMA Number 3 of 1997. Then, apart from that, it is also clearly regulated related to the requirements to the stages in the transfer of land rights from the beginning of registration as a complete source of information and the collection of complete documents until the issuance of the right certificate. Everything that is done in these articles is a series of activities based on the principle of prudence to provide guarantees of legal certainty and steps in preventing the occurrence of land rights disputes.

The law will basically develop in accordance with the development of the existing times, therefore after the existence of the Laws and Regulations mentioned above, there are also rules that regulate the registration of the transfer of land rights, namely Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats and Land Registration. The author argues that the birth of this regulation is based on the application of the principle of meticulousness in land registration, the birth of this regulation is to improve the rules that have existed before. Articles 84 to 93 are detailed explanations related to land registration, including electronic registration. Taking advantage of the development of the existing times, this article conveys that land registration can be done electronically, this is intended to provide security guarantees for both physical data and juridical data. When these data provide security, it can provide maximum prevention if there are later disputes over land rights such as double certificates. Apart from that, the article also explains the rules in the administrative control of land registration. The rules and regulations are an application of the principle of meticulousness with the development of previous rules that can provide data security in land rights before disputes occur.

Based on the dual certificate land dispute, the regulation provides results from the form of implementation of the principle of meticulousness, namely in the form of;

1. Land dispute resolution, more regulating the settlement of land disputes with double certificates in the form of provisions in it provides a specific legal basis in overcoming double certificate disputes.
2. Laws and Regulations give authority to the Head of the National Land Agency (BPN) in the prevention and resolution of disputes related to double certificates. This gives the importance of the role of the government in handling and replacing the occurrence of disputes which is also the application of the principle of meticulousness in the form of these rules.
3. The regulation also further regulates the settlement procedures that must be followed in resolving disputes over double certificates by complying with applicable legal rules.
4. It is hoped that the principle of prudence applied in the form of laws and regulations will create legal certainty in land rights and protect the rights of land rights holders, this is an important thing for stability and justice in the land ownership system in Indonesia (Nurmala & Alfiany, 2024).

The above description provides an explanation that the form of implementation of the principle of prudence on the transfer of land rights due to buying and selling in the provisions of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles is contained in article 19, Government Regulation Number 24 of 1997 concerning Land Registration is contained in articles 37 to 40, Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 3 of 1997 concerning Implementation Provisions Government Regulation Number 24 of 1997 concerning Land Registration is contained in articles 94 to 106, Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats and Land Registration is contained in articles 84 to 93 where these rules have continuity on the basis of the principle of meticulousness. Although in reality there are still disputes over double certificates, this makes a new focus to provide new prevention and development in existing laws and regulations with the aim of providing legal certainty guarantees to the community.

Based on the laws and regulations that have been described above, the government has issued and presented existing regulations to serve as a guide in the implementation of the registration process for the transfer of land rights due to buying and selling. In line with that, it is all based on the publication system embraced by Indonesia. Indonesia currently adheres to a negative publication system, therefore the state does not guarantee the correctness of the data presented. But it does not use a pure negative publication system but a negative publication system that has positive elements (Safitri, Tyesta, & Lumbanraja, 2020). The negative publication system has its advantages, namely; 1) the holder of the actual right is protected from other parties who are not entitled to the land; 2) There is an investigation of the land history before the issuance of the certificate. Then related to the shortcomings are; 1) there is no certainty about the validity of the certificate because at any time it can be sued if there is a party who objects to the issuance of the certificate; 2) the role of the land registration official or cadastral who passively does not support the correctness of the data contained in the land rights certificate; 3) Lack of transparency in the work mechanism of cadastral officials makes the general public lack of understanding regarding land registration (Anindhita, Patittingi, & Rossi, 2021). The implementation of the negative publication system used by Indonesia is considered ineffective in terms of land registration to ensure legal certainty. The government should conduct a study and consider the implementation of the publication system used and the regulation of laws and regulations that support the continuity of registration that can ensure legal certainty. This can be seen that there are still land disputes, especially the transfer of land rights due to buying and selling. The principle of meticulousness in this case needs to be further considered in its application in the laws and regulations that govern the registration of the transfer of land rights due to buying and selling.

CONCLUSION

Based on the results of the discussion of this study, the provisions in the provisions of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, Government Regulation Number 24 of 1997 concerning Land Registration, Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration, Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats Units and Land Registration has the principle of meticulousness applied in it, The application of the principle of meticulousness in these regulations has an important role as a basis for preventing and resolving disputes over double certificates in the transfer of land rights due to buying and selling. When the principle of prudence is applied in the form of the above laws and regulations, it will provide a tangible manifestation of good governance as in making good government required to apply the General Principles of Good Governance as expected by Law Number 30 of 2014 concerning Government Administration and the principle of prudence is included in the group of General Principles of Good Government. The negative publication system applied in land registration in Indonesia is considered ineffective because there are still disputes, especially in terms of the transfer of land rights due to buying and selling. The government in this

case must provide further steps in terms of reviewing the publication system used and the principle of prudence in laws and regulations as a guideline in the registration of the transfer of land rights so that later when it is implemented in practice, it can provide legal certainty guarantees to the legitimate land rights owners and the government realizes administrative order in good governance.

REFERENCES

- Anindhita, A. B., Patittingi, F., & Rossi, C. A. (2021). Perbandingan Sistem Publikasi Positif dan Negatif Pendaftaran Tanah: Perspektif Kepastian Hukum. *Amanna Gappa*, 29(2), 106-113.
- Astawa, I. P., & Na'a, S. (2012). *Dinamika Hukum dan Ilmu Perundang-Undangan di Indonesia*. Bandung: Alumni.
- Chomzah, A. A. (2003). *Hukum Pertanahan Seri Hukum Pertanahan III- Penyelesaian Sengketa Hak Atas Tanah dan Seri Hukum Pertanahan IV- Pengadaan Tanah Instansi Pemerintah*. Jakarta: Prestasi Pustaka.
- Indrati S, M. F. (2007). *Ilmu Perundang-Undangan I: Jenis, Fungsi dan Materi Muatan*. Yogyakarta: Kanisius.
- Nurmala, R. D., & Alfiany, T. F. (2024). Analisis dan Implimentasi Sertifikat Ganda Hak Milik Atas Tanah Berdasarkan Pasal 19 Uupa Dalam Perspektif Hukum Perdata. *Indonesian Journal of Law and Justice*, 2(1), 5.
- Rosadi, O. (2010). Hukum Kodrat, Pancasila dan Asas Hukum Dalam Pembentukan Hukum di Indonesia. *Jurnal Dinamika Hukum*, 10(3), 285.
- Safitri, F. A., Tyesta, L., & Lumbanraja, A. D. (2020). Akibat Hukum Penggunaan Sistem Publikasi Negatif Berunsur Positif Dalam Pendaftaran Tanah Di Kota Semarang. *Notarius*, 13(2), 795.
- Zainuddin, A. (2016). *Metode Penelitian Hukum*. Jakarta: Sinar Grafika.
- Undang-Undang Nomor 5 tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria
- Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah
- Peraturan Menteri Agraria dan Tata Ruang/ Kepala Badan Pertanahan Nasional Republik Indonesia Nomor 3 Tahun 1997 Tentang Ketentuan Pelaksanaan Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah
- Peraturan Pemerintah Nomor 18 Tahun 2021 Tentang Hak Pengelolaan, Hak Atas Tanah, Satuan Rumah Susun dan Pendaftaran Tanah