

American Journal of Humanities and Social Sciences Research (AJHSSR)

e-ISSN :2378-703X

Volume-5, Issue-3, pp-181-185

[www.ajhssr.com](http://www.ajhssr.com)

Research Paper

Open Access

## SAFE PRINCIPLE ON PROVISION OF INITIAL LAND REGISTRATION

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**ABSTRACT:** This research has described and examined issues concerning the safe principle on initial (first-time) land registration provision. The purpose of this research was to know the application of safe principle on initial registration provision so that legal certainty on land registration can be realized.

This research was a normative legal research that had prescriptive side. Type of data that used was secondary data. Secondary data sources used include primary, secondary and tertiary law materials. Data collection techniques used were document studies which was a technique of collecting data by studying, reading and reviewing books related to the literature with the problem studied. Data analysis technique used was deductive, inductive and interpretation.

The results showed that the safe principle on initial land registration in law number 5 of 1960 on the Principle Provision of Agrarian used a negative system while the government regulation of the republic of Indonesia number 24 of 1997 on land registration uses a positive system after 5 years of issue of land certificate.

**Keyword:** *Safe Principles, Provision, Initial (first-time) Land Registration*

### I. INTRODUCTION

Land is important needs for human to produce a farming and gardening and as for real estate or home. Land is a right for every Indonesian people as stipulated on article 28 H verse 4 of 1945 Constitution states that "Every people has private property rights and the rights can not be high handed take over by anyone". In that article explained that every Indonesia people has right to possess over the land in Indonesia.

Regarding to ensure the property rights then land registration performed for obtaining legal certainty according to Law No. 5 of 1960 aims of Principle Provision of Agrarian as stipulated on article 19 of Law No. 5 of 1960 on Principle Provision of Agrarian.

Law No. 5 of 1960 aims of Principle Provision of Agrarian has been basic agrarian provision in Indonesia. Before it enactment, Indonesia still performing Netherland rights such as *eigendom*, *erfpacht* and *opstal rights*. Those rights didn't has clear possession title, but after the enactment then entire land in Indonesia must be registered to be converted its rights to be one of right on Law No. 5 of 1960 on the Principle Provision of Agrarian such as property rights, cultivate rights, build and use rights. Land registration is also known as first-time land registration.

Land registration is initial land registration activity carried out on land objects that have not been registered under the Republic of Indonesia Government Regulation Number 10 of 1961 on the Land Registration or Government Regulation Number 24 of 1997 on the Land Registration. This first-time land registration is performed systematically and sporadically. After land registration takes place, a land certificate will be issued as evidence of rights so that it is easy to prove that he is the right holder, this is in accordance with the provisions of Article 4 Paragraph (1) of Law Number 5 of 1960 on the Principles Provision of Agrarian (Boedi Harsono, 2003: 475).

The purpose of issuing land certificates includes registration for the first time, as well as for registration of transfer of land rights.

Article 12 of the Government Regulation of the Republic of Indonesia Number 24 of 1997 on the Land Registration explains that the first-time land registration activities include:

1. Collecting and processing physical data.
2. Evidence of rights and accounting.
3. Issuance of land certificates.
4. Presentation of physical data and juridical data.
5. Storage of public registers and documents.

The provisions in Article 12 of the Government Regulation of the Republic of Indonesia Number 24 of 1997 on the Land Registration, of course, must pay attention to the use of safe principle. This principle does not

only concern the stages in the implementation of first-time land registration, but also concerns the feeling of security for land rights holders not to receive claims or objections from other parties after the land certificate is issued, so that land rights holders can obtain legal certainty.

In fact, there are still many land problems that occur in Indonesia. The Indonesian Social Development Paper by World Bank shows that the second highest level of conflict cases in Indonesia is the land conflict (Novri Susan, 2013: 870). Based on data from the Ministry of Agrarian Affairs and Spatial Planning / National Land Agency in 2013, there were 329 land cases that occurred in Central Java ([www.bpn.go.id](http://www.bpn.go.id) accessed on 01 February 2021 at 10.00 WIB).

First-time land registration is intended to obtain land certificates in order to obtain legal certainty regarding land ownership, however, land disputes and conflicts still occur which cause land owners to feel insecure even though they already have land certificates. This also concerns the regulations on first-time land registration that have not guaranteed legal certainty regarding land ownership. Therefore this study discussed the safe principle on provision of initial land registration.

## II. METHOD RESEARCH

This research was a normative legal research, provided a prescription regarding the application of safe principle on land registration for the first time, therefore primary and secondary legal materials were used with the technique of collecting legal materials from literature study / document study.

The technique of analyzing legal materials used the deduction, induction and interpretation methods with a minor premise, legislation and legal facts, while the major premise was the safe principle on first-time land registration.

## III. RESULT AND DISCUSSION

The formation of Law No. 5/1960 on the Principles Provision of Agrarian resulted caused the dualism of land regulations in Indonesia was over. All lands in Indonesia must be registered in accordance with the provisions of Law Number 5 of 1960 on the Principle Provisions of Agrarian and that implementing regulations.

The implementation of land registration includes first-time land registration and maintenance of land registration data. The first-time land registration activity (Opzet / initial registration) is a land registration activity carried out on land registration objects that have not been registered based on Government Regulation of the Republic of Indonesia Number 10 of 1961 on the Land Registration and Government Regulation of the Republic of Indonesia Number 24 of 1997 on the Land Registration (Urip Santoso, 2013: 32).

Initial (First-time) land registration is carried out through systematic and sporadic land registration (Urip Santoso, 2013: 33):

1. Systematic land registration is the first-time land registration activity carried out simultaneously which includes all land registration objects that have not been registered in the territory or part of the village / sub-district area. Systematic land registration is carried out in government cases based on a long-term and annual plan and is carried out in areas designated by the State Minister for Agrarian Affairs / Head of the National Land Agency. In this case a village / sub-district is assisted by an Adjudication Committee formed by the State Minister for Agrarian Affairs / Head of the National Land Agency.
2. Sporadic land registration is the first-time land registration activity regarding one or more land registration objects within the territory or part of a village / sub-district, individually or in mass. Sporadic land registration is carried out at the request of interested parties. Sporadic land registration can be done individually or in mass.

Initial (first-time) land registration is carried out on lands that did not have land certificates and still used old rights such as eigendom rights, erfpacht rights, and opstal rights. Based on Article 12 of the Government Regulation of the Republic of Indonesia Number 24 of 1997 on the Land Registration, the first-time land registration activities include:

1. Collecting and processing physical data.
2. Evidence of rights and accounting.
3. Issuance of land certificates.
4. Presentation of physical data and juridical data.
5. Storage of public registers and documents.

The implementation of land registration for the first time can be carried out systematically or sporadically. The stages in land registration for the first time, of course, must be carried out carefully and thoroughly so as to obtain legal certainty regarding land ownership as described in the safe principle on land registration. However, although every stage in the first-time land registration has been carried out carefully and thoroughly, there are still land disputes and conflicts that occur.

Land disputes and conflicts from year to year still occur even though the stages in land registration for the first time have been carried out in accordance with existing laws and regulations

Land disputes and conflicts that occur show that the safe principle on land registration for the first time has not been realized, even though the land certificate has been issued, it does not rule out the possibility of the land certificate being sued by other parties who feel aggrieved.

Law No. 5 of 1960 on the Principles Provision of Agrarian provides guidelines in terms of land registration activities as described in Article 19 Paragraph (2) which states that land registration activities are carried out including:

1. Measuring the mapping and land accounting.
2. Registration of land rights and transfer of these rights.
3. Giving certificates of proof of rights, as a powerful evidences.

Land disputes and conflicts that are still occurring are due to the provisions of Article 19 Paragraph (2) letter C of Law No. 5 of 1960 on the Principles Provision of Agrarian, land title certificates are "strong" evidence, meaning: they must be considered true as long as they cannot be proven otherwise in court with other evidence. That the certificates of proof of right are valid as a powerful evidence means that the statements contained therein (by the judge) are true information, as long as and as long as there is no other tools of proof that proves otherwise. In such a case, the court will decide the valid evidence. In other words, given that there is still a chance for the parties to file a lawsuit against the holders of land title certificates, it can be concluded that the legal power of land title certificates is not absolute (Bronto Susanto, 2014: 76).

The provisions of Article 19 Paragraph 2 letter C Law Number 5 of 1960 on the Principles Provision of Agrarian do not guarantee legal certainty to land certificate holders so that the safe principle has not been embodied in Law Number 5 of 1960 on the Principles Provision of Agrarian. Unlike the case with the publication system applied in the Netherlands.

Netherlands uses a moderate negative system because while on the one hand it does not guarantee ownership to the registered owner of immovable property, on the other hand it secures to a high degree that the transfer will not be canceled. The deed system offers sufficient protection due to the involvement of a notary and cadastre and special provisions in the law (Arie Sukanti Hutagalung, Wilbert D. Kolkman, Leon C.A. Verstappen, Cs. 2012: 51):

1. Transactions must be prepared by a legal expert, notary is responsible for errors.
2. The law regulates the information that must be contained in the notary deed.
3. Notary is controlled by Cadastre, Cadastre is entitled to refuse the registration of a notary deed if the deed is not contains all the information required by law.
4. The law protects third parties if they believe in information emerging from public archives.

The moderate negative system implemented in Netherlands can make the Notary and Cadastre be careful in registering land, because if there is an error in land registration, the Notary must be responsible for his errors. Cadastre is also responsible for errors and delays by its staff that cause damage or loss (Article 117 of the Law on Land Registration), both relating to maintaining and updating lists of land registries and public archives. Finally, in a special case where the protection rules for a third party with good intentions turn out to cause you to lose your rights, the government is responsible if you do not make a contribution to that third party with good intentions (Article 3:30 of the Civil Code) (Arie Sukanti Hutagalung, Wilbert D. Kolkman, Leon CA Verstappen, Cs. 2012: 51-52).

The moderate negative system implemented by Netherlands further guarantees legal certainty because of Notary, Cadastre and the Government responsibility if there is an error in land registration.

Land registration provision are not only regulated in Law Number 5 of 1960 on the Principles Provision of Agrarian but are also regulated in detail in the Government Regulation of the Republic of Indonesia Number 24 of 1997 on the Land Registration which is an implementing regulation of Law No. 5 of 1960 on the Principles Provision of Agrarian.

The provisions of Article 32 Paragraph (1) of the Government Regulation of the Republic of Indonesia Number 24 of 1997 on the Land Registration explain that a certificate is a evidence of right which is valid as a strong evidence regarding the physical data and juridical data contained therein, as long as the physical data and juridical data are in accordance with the data contained in the relevant measuring letter and land title book. Certificate as a strong evidence certainly does not guarantee legal certainty for land certificate holders because later a lawsuit can be filed from the aggrieved party to overcome weaknesses in the provisions of Article 32 Paragraph (1) Government Regulation of the Republic of Indonesia Number 24 of 1997 on the Land Registration is covered by the provisions of Article 32 Paragraph (2) Government Regulation of the Republic of Indonesia Number 24 of 1997 on the Land Registration.

The provisions of Article 32 Paragraph (2) Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration, land certificates that have been legally issued in the name of a person or legal entity that acquires the land in good faith and actually controls it, then other parties who feel they have rights over the land can no longer demand this right if within 5 (five) years since the issuance of the

certificate, the certificate holder and the Head of the Land Office concerned have not filed a written objection or have not filed a lawsuit with the Court regarding land control or the issuance of the certificate.

Observing the provisions of Article 32 Paragraph (2) of the Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration, that a land title certificate can be turned into a certificate of absolute right if it meets the requirements or cumulative elements, a. Certificate issued legally on behalf of a person or legal entity; b. Land is obtained in good faith; c. Land controlled in real terms; d. Within 5 (five) years the certificate issuance, no one has submitted a written objection to the certificate holder and the Head of the local Regency / City Land Office or has not filed a lawsuit at the court regarding land control or certificate issuance (Bronto Susanto, 2014: 81). So that the Government Regulation of the Republic of Indonesia Number 24 of 1997 on the Land Registration adopts a positive system after 5 years of issuance of land certificates.

There is a conflict between Law No. 5 of 1960 concerning Principles Provision of Agrarian which adhere to a negative system while Government Regulation of the Republic of Indonesia Number 24 of 1997 on the Land Registration which adopts a positive system after the land certificate is issued for 5 years.

Based on the theory of the legal system from Hans Kelsen in his theory known as the legal level theory (Stufentheorie), the lower norms apply and it is based on higher norms, and so on until at unidentified norms that cannot be traced further which are called basic norms (Grundnorm). Basic norms are the highest norms of a system that are predetermined by the community and become the dependents of all the existing norms under them, so that the basic norms are said to be pre-supposed (Maria Farida Indrati Soeprapto, 2010: 41). So that in this case the lower norms must not contradicted with the higher norms.

If this theory of legal level is projected into the prevailing legal norms in Indonesia, the following hierarchical grouping will be obtained (Jimly Asshiddiqie, 2006: 171):

1. Basic Norms (Grundnorm)/State Fundamental (Staatsfundamentalnor) Indonesia is Pancasila and the Preamble to the Constitution of the Republic of Indonesia (UUD NRI 1945). So that all legislation under it must refer to this basic norm (Hans Kelsen).
2. Indonesia's Principle Rules (Statgrundgesetz) are the body of the 1945 Constitution of the Republic of Indonesia, the TAP of the People's Consultative Assembly of the Republic of Indonesia and the State Administration Convention.
3. Indonesia's formal law (Formell Gesetz) is a law.
4. Implementing Rules / Autonomous Regulations (Verordnung & Autonome Satzung) in Indonesia are hierarchical starting from Government Regulations, up to Regent / Mayor decisions.

Law No. 5 of 1960 concerning Principles Provision of Agrarian is at a higher level than the Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration, so that in this case Indonesia uses a negative system in land registration as adhered to by Law No. 5 of 1960 on the Principles Provision of Agrarian.

#### **IV. CONCLUSIONS**

The safe principle on provision of initial (first-time)land registration was regulated in Law No. 5 of 1960 on thePrinciples Provision of Agrarian and Government Regulation of the Republic of Indonesia Number 24 of 1997 on the Land Registration, however there is a conflict between Law No. 5 of 1960 on thePrinciples Provision of Agrarian with Government Regulation of the Republic of Indonesia Number 24 of 1997 on the Land Registration. In Law No. 5 of 1960 on thePrinciples Provision of Agrarian uses a negative system so that the safe principle in Law No. 5 of 1960 on thePrinciples Provision of Agrarian has not been realized. Whereas in the Government Regulation of the Republic of Indonesia Number 24 of 1997 on the Land Registration uses a negative system for 5 years, after 5 years since the issuance of land certificates using a positive system so that the safe principle can be realized because it guarantees more legal certainty.

#### **V. RECOMMENDATIONS**

1. Law No. 5 of 1960 on the Principles Provision of Agrarians should adopt the provisions of Article 32 Paragraph (2) of Government Regulation of the Republic of Indonesia Number 24 of 1997 on the Land Registration which uses a positive system after 5 years of issuance of land certificates so that legal certainty guarantees regarding land owners can be realized.
2. Indonesia can adopt the modern negative system implemented by Netherlands so that if there is an error in land registration there is responsibility for the Notary / PPAT, the National Land Agency, and the Government thus the land rights holder will not feel disadvantaged if there is a lawsuit or objection from other parties.

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