

# Land Registration In Information Technology Perspective A Basis Of Basic Agrarian Law In Indonesia

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**Abstract:** Land registration is basically intended to provide a legal certainty to land objects, subjects, and title statuses and also legal protection of land owners. The concept of land registration is effected by population growth, social- economic condition. It is a series of activities including land measurement, mapping, and recording, land title registration, and issuance of land certificate. To the purpose, a publication principle, i.e, anyone is allowed to find out any land title (rights) and legal action on lands, is adopted. There are two different publication systems, positive and negative ones, with some differences in both legal practices and consequences. In a positive publication system, the truth of what are contained on the land subject and object is ensured. On the other side, in negative publication system an owner of registered land title isn't secured by law. The national land registration system, according to Article 19 of UUPA (Basic Agrarian Law) and PP (Governmental Regulation) No. 24 of 1997, adopts a negative but positive-tended system. The problems in the field are that a registration process is time consuming and relatively costly. Besides, very often double certificates of the same object are discovered. Land registration system that adopts a negative but positive-tended publication synergized with the development of technology, in this case Continuously Operating Reference Station (CORS), may accelerate land registration at high accuracy and low cost and provide legal certainty on land objects, subjects, and titles as well as protection of real land owners.

**Keywords:** Land Registration, Information Technology, and UUPA (Basic Agrarian Law).

## 1 INTRODUCTION

Talking about land registration commonly begins with ancient stories that occurred centuries B.C. about Egyptian farmers dwelling in very fertile Nil River valley who had found it difficult to rediscover the boundaries of their own lands that disappeared yearly resulting from flooding. Recently, in Indonesia, Tsunami disaster in Nanggroe Aceh Darussalam has eliminated not only the boundaries of land ownerships but also recorded data of the boundary points. Term of land registration in Latin is "*capistratum*", in Germany and Italy "*catastro*", in France "*cadastre*", and in the Dutch and Indonesia language "*kadaster*". Linguistically, *capistratum* or *kadaster* is meant as a register or capita or unit which in Roman land means *wimis* or record referring to size, value, and ownership or holder of a land. Meanwhile, modern cadastre refers to a large-scale map and its related lists. In Indonesia, land registration is stipulated in article 19 of UUPA, aiming to provide legal certainty and land title certainty. The certainty of land title may prevent land disputes. Likewise, a registration of one's land title prevents others from claiming it, unless the latter perceivably has a stronger right and then files a lawsuit before a relevant district court by substantiating the validity of the land title in conformity with the land registration principle and system applicable in Indonesian positive (prevailing) laws, that is, a negative but positive-tended system as adopted by Governmental Regulation (PP) Number 24 of 1997. However, though UUPA provides for land registration, it doesn't define the term. Likewise, neither PP No. 10 of 1961 nor PP No. 24 of 1997 on Land Registration defines what is meant by land registration. According to A.P. Protection, cadastre is an appropriate instrument that contains the description and identification of a land and also as a continuous recording of the land title.

Moreover, United Nations Economic Commission for Europe presents a definition of cadastre as follows: "The Cadastre is an information system consisting of two parts; a series of maps or plans showing the size and location of all land parcels together with text records that describe the attributes of the land" According to Hansen and I.P. Williamson: "The Cadastre outlines or boundaries of the property and the parcel identifier are normally shown on large-scale maps, which, together with registers, may show for each separate property the nature, size, value and legal rights associated with the parcel. It gives an answer to the questions "where" and "how much". From the definitions above it can be drawn a definition of *kadaster* (land registration) as 'activities of registering lands in an area, providing information systematically by the figures of parcel by parcel, the boundary points of which are clear in field survey-based maps. In Indonesia, *kadaster* is often meant as just ownership maps and land taxation maps, whereas in fact it is of a wider meaning. In practice, it isn't secret anymore that a lot of people find it difficult to register their lands. Its process takes a long time and is costly. Viewed from administrative aspect, the services of agrarian office cannot produce expected performance, i.e., simple, secure, affordable, and transparent services. In contrary, they are sluggish, strenuous, costly, and complicate services, often resulting in malpractice and double certificates of the same parcel. In the reformation era currently such a condition is very unfavorable. Therefore, it needs to think of its solution in line with the demands of reformation that emphasizes transparence, effectiveness, efficiency, and measurability. Accordingly, we need to ponder how the implementation of land registration is synergized with the currently rapid advancements in information technology?"

## 2 THEORETICAL FRAMEWORK

The goals of land registration are, among others:

1. To provide legal certainty and protection to the holders of land titles.
2. To convey information to the concerned, providing data needed in doing any legal action on a land parcel.
3. To implement nationally agrarian administration order.

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In theory, there are three essential elements of title registration, known as Mirror, curtain and Guarantee. The register of owners is supposed to mirror the actual structure of right in the land itself. Finally, the state guarantees the titles on the register, a state insurance scheme. It is very important to remember that: 1. Land registration is concerned with the registration of ownership, not merely with some rights in land. In a land registration, there are 2 (two) different systems: registration of deeds and registration of titles. It should be noted that this system of registration of deed act very modest contribution to the reform of conveyancing, it operates within the confines of the traditional methods of conveyancing and is basically designed to deal with problems of priority within that system. It has nothing to do with registration of title. Land registration system deals with everything registered, including the form of data storage, presentation of juridical data, and, most importantly, the form of title evidence. The development of land registration in different countries is commonly influenced by that of population, social-economy, and technology. After the industrial revolution in 1800s, there appeared a liberal notion that triggered a dispute between agrarian-based people and modern technology-based ones. According to liberal notion, all people have equal right of welfare that they have to struggle. In modern rule of law concept, states are in obligation to enhance the welfare of its whole people without exemption. According Esping-Andersen in general, a country can be classified as a welfare state if it has 4 main pillars, namely: (1) social citizenship; (2) full democracy; (3) modern industrial relation system; and (4) right to education and the expansion of modern mass education system. The welfare state is a dynamic force in the rearrangement of social relations..." This notion affects the publicity system of land titles. The publicity system provides some information, e.g.: 1. The certainty of the owner of a land title and its limitation, 2. Method of publicity, and 3. Title registration agency. In a land registration there are 2 (two) different legal principles applicable in transferring a land title: good faith principle and "*nemo plus iuris*". The first provides protection to those who gain a land title, based on a legally justified right basis. The latter says that individuals or legal persons can make only transfer(s) in accordance with the right or title they hold, or in other words individuals or legal persons cannot transfer any right beyond their own rights. The publication system used in good faith principle adopts a positive system, while "*nemo plus iuris*" principle adopts a negative system. In the negative publication system, the result of registration (certificate) of land title isn't absolutely valid, while in the positive publication it is. Indonesia adopts a negative but positive-tended system. That is, the result of land title registration is a strong evidential tool. On the registration it each estate owner is provided with a certificate of title which record that he is the registered proprietor of the appropriate estate. Currently, the advancement in information technology has transformed most working methods from originally just relying on analog methods to relying on digital ones. Such transformation makes working faster, more accurate, and reliable. Information technology is also applied to support the activities of land registration now. For a land title certificate to be a strong evidence tool, accurate and high quality measurement results are needed. Moreover, to support such results, it needs to synergize land registration system with the development of an information technology, Continuously Operating Reference Station (CORS), or in National Agrarian

Agency circle is well known as Defense Satellite Reference Network (DSRN). CORS itself is one of the GNSS-based technologies employed for various applications related to the determination of positions. CORS technology facilitates and accelerates the realization of agrarian administration, including land registration activities, such as measurement, mapping, and high accuracy land recording at lower prices as compared to earlier methods, and thus it can improve service quality as well as acceleration of the process of issuing land title certificates. Here is a scheme of land registration process synergized with Continuously Operating Reference Station (CORS) technology.

### 3 METODOLOGY

The present research began with carrying out verification and evaluation of relevant legal norms according to legal theories of land registration so as to obtain a solution of accurate acceleration land registration and in the same time contribute to the development of national agrarian law. In the research some stages were accomplished, among them: 1. Identifying legal facts; 2. Collecting legal materials considered as relevant to land registration system; 3. Carrying out legal study of legal problems (legal issues) based on legal theories and land registration theories; 4. Drawing conclusion and presenting recommendation to solve the legal problems; and 5. Presenting prescriptions or what should be done according to the argumentations that have been constructed in the conclusion. The approaches used in the research were statute, historical, and comparative approaches.

### 4 THE IMPORTANCE OF INFORMATION TECHNOLOGY IN LAND REGISTRATION

Information technology is a technique of collecting, preparing, saving, processing, announcing, analyzing and/or disseminating information. The rapidly developed information technology has currently been producing more diverse telecommunication services and facilities and more sophisticated telecommunication media capable of integrating all media into a single information technology media. The utilization of information technology and electronic transaction are intended to:

- a. Educate the nation's people as part of global information community;
- b. Develop national trade and economy in a bid to enhance people welfare;
- c. Increase the effectiveness and efficiency of public services;
- d. Open as wide vacancies as possible for everyone to advance their thoughts and competences in using as optimal information technology as possible in responsible ways;
- e. Provide a sense of security, fairness, and legal certainty to the users and operators of information technology.

In considering the intentions above, the use of information technology is basically an attempt of accelerating the enhancement of people welfare in general, and that of facilitating people to work or to receive public services in particular. Moreover, the development of hardware and software technologies in computers has made them a valuable aid for human beings in doing their diverse works by computerized methods the benefit of which has been found in form of time and labor effectiveness and efficiencies.

Accordingly, information and telecommunication technologies are part of the development of computers that are integrated into a communicational device to aid at giving distance telecommunication access between individuals and communities by a public network. With the capability, computers as a communication device, commonly called internet (Interconnection Networking), has increasingly been developing and playing a crucial role nowadays. The use of information technology has currently been a necessity in modern lives, such as in education (electronic education), commerce/business (electronic commerce or e-commerce), health (telemedicine), transportation, tourism industry, environment and even entertainment as well as public services in public agencies. As for public service, information technology is highly needed in accelerating the provisions of service to the people of Indonesia, an Archipelago with a territory stretching from Sabang to Merauke. Especially in land registration that requires high accuracy, the use of information technology is very relevant in accelerating accurate land registration processing. In a bid to provide legal certainty of land titles and boundaries, the Article 19 of UUPA authorizes the government to perform land registration, which is important for conferring peace and confidence to the holders of land titles. Meanwhile, the self-sufficiently public participation, called sporadic registration, is also expected in land registration, given the limitation in government finance. A first-time land registration that includes land measurement, mapping, and recording, land title registration, and issuance of land certificate is relatively costly. This can be coped with by the government by preventing budget leakages across Ministry of Agrarian and Design. Systematically, there are some problems in land registration, among them:

1. The lack of procedural standards (SOPs) and product standards (SPs);
2. The frequent cases of the double certificates because registered parcels have not been entered into a registration map;
3. The lack of large-scale maps as one of the crucial tools in doing a land registration;
4. Governmental Regulation No. 24 of 1997 authorizes that the implementation of registration should be simple, secure, and affordable. However, its implementing regulation doesn't reflect simplicity in that the procedures pursued in the registration processes are protracted and expensive;
5. The many non-integrated regulations that are component (working unit) in character so that the services become prolonged, expensive, and not transparent.
6. The separations of provinces, regencies, municipalities, districts, and villages, or mergers of villages

Furthermore, it needs some effort to arrange that the SOP be implemented by information technology online so that administrative services are transparent, effective, and efficient. The use of CORS facilitates and accelerates the realization of the administrative order of land affairs including land registration that consists of land measurement, mapping, and recording activities at high accuracy and relatively inexpensive cost. This matter is consistent with mandate of TAP MPR No. IX/MPR/2001 (Decision of Provisional People's Consultative Assembly), stipulating on Reformation of Agrarian and Natural Resource Management management of natural resources.

## 5. CONCLUSIONS

In facing the problems of land registration, when synergized with the development of advanced information technology, the following measures are needed in the future:

1. Regulating land registration at a law (act) level, so as to realize legal certainty;
2. Developing a land registration system easily accessible to people;
3. Utilizing a design as a reference and instrument of coordinating developments inter-localities and inter-sectors;
4. Following up the development of information technology especially Continuously Operating Reference Station (CORS) technology synergized with the applicable land registration system; and
5. Developing CORS infrastructure at each Regional Office and Regency/Municipality Agrarian Office throughout Indonesia;  
Carrying out land registration online in stages, so that in the end it may help accelerate land registration throughout Indonesia

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