



## Ideal Construction of Village Government in Organizing Land Registration

Fatmawati Cahyaningtyas\* ; Isharyanto Isharyanto

Faculty of Law, Sebelas Maret University, Surakarta  
Email: fatmawaticahyaningtyas@gmail.com

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### **Abstract**

This article aimed to describe the less clarity of the scope of the regulatory legislation meant in article 26 paragraph (2) item o of Law no. 6 of 2014 about village that is interpreted to the village head' role as the adjudication committee of land registration who is authorized to collect and organize physical and juridical data of land parcels in his area as it is listed on the government Regulation no. 24 of 1997 about Land Registration, regulation of Minister of Agrarian and Spatial Planning/ Head of National Land Agency of Republic of Indonesia no. 6 of 2018 about Complete systematic land registration. In addition, this article aimed to describe the ideal construction of village government in organizing land registration. The current study was classified as an empirical study with a descriptive qualitative approach. This study takes Pablegan Village Head Office of Matesih District of Karanganyar Regency and The Agrarian and Spatial Planning Office/ National Land Agency (ATR/BPN) of Karanganyar Regency as the location of the study. This study found that in the substance of article 26 paragraph (2) item o of Law no. 6 of 2014 about village, there is a phrase that makes the scope of its regulatory legislation less clear so that an ideal construction of village government in organizing land registration is needed to make the scope of article 26 paragraph (2) item o of Law no. 6 of 2014 about village clear and reflect legal certainty.

**Keywords:** Land Registration; Village Government Role; Ideal Construction

### **Introduction**

Based on the provision of article 33 paragraph (3) of 1945 Constitution, it is asserted that: "The land and the waters, as well as the natural riches therein, are to be controlled by the state to be exploited to the greatest benefit of the people". In order to organize the mandate of that article, the government as the highest authority over all its people shall determine and organize the legal relationship between the people and the legal action related to the control of land, waters, and airspace (Danan Irianto., 2015: 1).

In pursuant to the state' obligation in determining and organizing the legal relationship between people and land, waters, and natural riches, Law no. 5 of 1960 about the basic regulation of Agraria. The aim of agrarian reformation the law no 5 of 1960 about Basic agrarian law is to place the basis in providing legal certainty related to the land rights for all people (Antje M. Ma'moen., 1996: 2). Based on the aim of law no. 5 of 196 about Basic agrarian Regulation, the government, oblige all landowner to register his/her lands. A study of registration of land system is essential, at least since registration of land

provides legal certainty of land ownership for the person whose name is in the certificate and prevents land tenure disputes (RA. Andria Jayanti, M. Arba and Hirsanuddin., 2017: 23).

In order to have all land parcels in Indonesia registered, the government has launched the acceleration program of land registration through Complete Systematic Land Registration (hereinafter referred to as PTSL) until 2025 (\_\_\_\_\_, <http://setkab.go.id/presiden-jokowi-teken-inpres-percepatan-pendaftaran-tanah-sistematis-lengkap/>, accessed on 11 April 2018, at 10.05 WIB). PTSL is regulated in the regulation of Minister of Agrarian and Spatial Planning/ Head of National Land Agency of Republic of Indonesia no. 6 of 2018 about Complete Systematic Land Registration to assist the organization of current government' program (Auliyaa Martati, 2018: 33). PTSL is held to finish President' Joko Widodo government namely 5 million land certificate in 2017. Thus, the total of certified land at the end of 2017 is 51 million land parcels (\_\_\_\_\_, <http://www.mediaindonesia.com/read/detail/135625-sertifikasi-serentak-percepat-kepastian-hukum-hak-atas-tanah-bagi-masyarakat>, accessed on 12 April 2018, at 20.37 WIB).

Pablengan village is one of the villages that apply for PTSL to the Agrarian and Spatial Planning/ National Land Agency (ATR/BPN) of Karanganyar Regency. This village is one of nine villages of Matesih District, Karanganyar Regency, Central Java Province. Based on the interview with Harno as the Pablengan village head on 13 April 2018, this village had finished PTSL in 2017, the total of certified land parcels were 1400 parcels. Harno said that before land registration, the evidence of land ownership in Pablengan Village was only in the form of the excerpt of Letter C stored in the Pablengan Village Office and the Notification of Tax Due stored by the right holder.

In organizing PTSL, the role of adjudication committee in collecting and organizing physical data and juridical data regarding the land parcels to be registered is essential. The regulation regarding adjudication committee in Regulation of Minister of Agrarian and Spatial Planning/ Head of National Land Agency of Republic of Indonesia no. 6 of 2018 about Complete systematic land registration is listed on article 12 paragraph (1), while, before the enactment of that regulation, the regulation regarding adjudication committee of land registration is listed in article 8 o government Regulation no. 24 of 1997 about Land Registration. These two regulatory legislations regulate provision that the adjudication committee of land registration consists of the land registry office officer by involving the element of village government from every village concerned.

This procedure is also implemented during PTSL in Pablengan Village. The element of Village Government was involved in collecting physical data and juridical data of the land parcels to be registered. The element of village government involved in PTSL is mainly village head. Pablegan Village head acted as the adjudication committee of land registration which is authorized to collect and organize physical and juridical data of the land parcels in Pablegan village during PTSL program.

However, this village head duty and authority has been regulated in Law no. 23 of 2014 about Local Government, Law no. 6 of 2014 about the village, and Regulation of Minister of Home Affairs of Indonesia no.44 of 2016 about the Village authorities, which becomes the basis of authority assigning as well as the village government duty implementation. In law no. 6 of 2014 about village, especially article 26 paragraph (2) item o, it is stated that:

In carrying out the tasks of organizing, implementing Rural Development, Rural community development and empowerment of villagers, the village head is authorized to carrying out other authority in accordance with the legislation.

The formulation of the substance of article 26 paragraph (2) item o of Law no. 6 of 2014 about village is then interpreted that to be the role of village head as the adjudication committee

of land registration which is authorized to collect and organize physical and juridical data of the land parcels in his area. However, the provision that “the village head is authorized to carrying out other authorities in accordance with the legislation” makes the scope of that article unclear

because the role of village chief as the adjudication committee of land registration is regulated on the government Regulation no. 24 of 1997 about Land Registration and the regulation of Minister of Agrarian and Spatial Planning/ Head of National Land Agency of Republic of Indonesia no. 6 of 2018 about Complete systematic land registration. Whereas, government Regulation no. 24 of 1997 about Land Registration has been enacted long before law no. 6 of 2014 about village and is still in force until the enactment of law no. 6 of 2014 about village, however, the formulation in the substance of article 26 paragraph (2) item o of Law no. 6 of 2014 about village states that “the village head is authorized to carrying out other authorities in accordance with the legislation”.

The less clarity of the scope of the regulatory legislation meant in article 26 paragraph (2) item o of Law no. 6 of 2014 about village refers to the phrase “other authorities in accordance with the legislation”. This phrase has not explained whether the other authorities in accordance with the legislation referred by article 26 paragraph (2) item o of Law no. 6 of 2014 about village involve other authorities in all regulatory legislation or only the other authorities in the regulatory legislation enacted after law no. 6 of 2014 about village is in force. Based on the description above, this article aimed at the ideal construction of village government in organizing land registration.

### ***Methodology***

The current study was classified as an empirical study (non-doctrinal), it is a study to discover theories regarding the process of how the law works and occurs among the society (Sunggono., 2011: 43). The source of the data in the current study were the primary and the secondary data collected through interviews (Soemitro., 2004: 59-60).

The data analysis technique of this study was qualitative descriptive in order to reveal facts, conditions, and phenomena happen during the study and presenting the data as it is. To have an ordered and systematic study, the researcher needs to adhere certain procedures (Soekanto and Mamudji., 1990: 50) such as, data collection, data analysis, data interpretation, and is ended by a conclusion based on the data analysis (Amirudin et al., 2006: 145). The process of the data analysis of this study was: data collection process, data analysis process, data interpretation process, and conclusion drawing process.

### ***Results and Discussion***

The role of the village head as the adjudication committee of land registration which is authorized to collect and organize physical and juridical data of the land parcels, in the regulation of article 26 paragraph (2) item o of Law no. 6 of 2014 about village states that:

In carrying out the tasks of organizing, implementing Rural Development, Rural community development and empowerment of villagers, the village head is authorized to carrying out other authority in accordance with the legislation.

By reviewing the authority of village head is it is mentioned in article 26 paragraph (2) item o of Law no 6 of 2014 about village and then is interpreted in to the village head role as the adjudication committee of land registration who is authorized to collect and organize physical and juridical data of the

land parcels, there is unclarity in the scope of legislation mentioned in article 26 paragraph (2) item o of Law no.6 of 2014 about village. The unclarity lies on the phrase“ other authorities in accordance with the legislation” that may not be capable of elucidating which other authorities meant by the substance of the article. It is unclear either the other authorities in all legislation enacted before and after the law no. 6 of 2014 about the village is enacted, or only the other authority in the legislation enacted after the law no. 6 of 2014 about Village arises.

The formulation of the substance of article 26 paragraph (2) item o of Law no.6 of 2014 about village means that other authorities assigned to the village head are only for the other authorities listed on the legislation enacted only after the enactment of Law no.6 of 2014 about the village. While, about the other village head authorities stated on the legislation enacted before the enactment of Law no. 6 of 2014 about Village and still in force until the Law no. 6 of 2014 about Village is enacted are excluded from the scope meant by article 26 paragraph (2) item o of Law no. 6 of 2014 about village So in such case, the scope of legislation meant by article 26 paragraph (2) item o of Law no. 6 of 2014 village is unclear.

In addition, in the legal principle of legislation introduced by Purnadi Purbacaraka and Prof. Soerjono Soekanto, there is the principle of non-retroactive, it means that legislation does not recede. This principle is used to warrant legal certainty among the society regarding the law in force (Purnadi Purbacaraka and Soerjono Soekanto., 1989: 7-11).

Based on the implementation of this principle,it can be concluded that the substance formation of article 26 paragraph (2) item o of Law no. 6 of 2014 about village can only be implemented to accommodate regulation regarding village head authority to collect physical and juridical data of land parcels in his area which regulated only in Article 14 paragraph (1) of Regulation of Minister of Agrarian and Spatial Planning/ Head of National Land Agency of Republic of Indonesia no. 6 of 2018 about Complete systematic land registration. It happens since the regulation of Minister of Agrarian and Spatial Planning/ Head of National Land Agency of Republic of Indonesia no. 6 of 2018 about Complete systematic land registration is enacted after the law no. 6 of 2014 about village is in force on 11 April 2018.

While on the provision regarding village head' authority to collect and to organize physical and juridical data of land parcels mentioned in article 52 of regulation of Minister of Agrarian and Spatial Planning/ Head of National Land Agency no. 3 of 1997 about the exercise provision of Government Regulation no. 24 of 1997 about Land Registration, the formulation substance of article 26 paragraph (2) item o of Law no. 6 of 2014 about village cannot be implemented to accommodate it. It occurs since the government Regulation no. 24 of 1997 about Land Registration had been enacted long before the law no. 6 of 2014 about the village is enacted and still in force when law no. 6 of 2014 about village is enacted. Government Regulation no. 24 of 1997 about Land Registration is enacted on 8 July 1997 and is in force since 8 October 1996 (Article 66 of Government Regulation no. 24 of 1997 about Land Registration), while law no. 6 of 2014 about the village is enacted on 15 January 2014 and is in force since the date of enactment (Article 122 of law no. 6 of 2014 about village).

The principle of non retroactive becomes the basis that makes the scope of substance of article 26 paragraph (2) item o of Law no. 6 of 2014 about village cannot be implemented to accommodate the scope related to the village head' authority to collect and to organize physical and juridical data of the land parcels as it is regulated in Government Regulation no. 24 of 1997 about Land Registration, it is only suitable to accommodate the regulation regarding the village head' authority to collect and to organize physical data and juridical data of the land parcels as the part of land registration procedure listed on the regulation of Minister of Agrarian and Spatial Planning/ Head of National Land Agency of Republic of Indonesia no. 6 of 2018 about Complete systematic land registration.

Because of less-clarity of the scope of legislation meant in the substance of article 26 paragraph (2) item o of Law no. 6 of 2014 about the village, it is necessary to have the ideal construction of village government in organizing land registration. To arrange ideal construction of village government in organizing land registration, the implementation of the principle of legal certainty shall be considered, it is essential to obtain the clarity of scope of the legislation meant in the substance of article 26 paragraph (2) item o of Law no. 6 of 2014 about the village.

As Indroharto argues, legal certainty obliges objective law in force for everyone shall be clear and be adhered. It is known that legal certainty also concerns with the certainty of legal norms. The legislator shall create the certainty of legal norms based on the principle of legality, decency, and justice (I Nyoman Satia Negara., 2016: 84). Furthermore, according to Yance Arizona, normative legal certainty is a regulation that is created and enacted because it clearly and logically regulates. Clear means not lead to doubts (multi-interpretation), and logic means it becomes a system of a norm, with the other norms, so it does not collide or create norm conflict (AFP Dadi, <http://e-journal.uajy.ac.id/4157/3/2MIH01327.pdf>, accessed on 15 April 2018, at 22.32 WIB).

I.C. van der Vlies in his book entitled *Handboek Wetgeving* states that principle of legal certainty which is included in one of the material principles is needed to form good legislation (Sony Maulana Sikumbang, Fitriani Ahlan Sjarif dan M. Yahdi Salampessy., 2015: 141-142). In addition, under the provision listed in article 6 paragraph (1) item i of Law no. 12 of 2011 regarding the formulation of regulatory legislation which states that the material content of regulatory legislation shall reflect the principle of order and legal certainty, every formulation of regulatory legislation created by legislative body shall be able to reflect such principle of order and legal certainty.

By considering the realization of the principle of legal certainty in formulating the ideal construction of village government in organizing land registration, the clarity of scope of the regulatory legislation meant in the substance of article 26 paragraph (2) item o of Law no. 6 of 2014 about village will be obtained. In the provision of article 5 item f of Law no.12 of 2011 about the formulation of the regulatory system, it is stated that “The formulation of regulatory legislation shall be done based on the principle of the formulation of good regulatory legislation, including the clarity of the formula”. Based on that article, in making regulatory legislation, the legislative body supposed to pay attention to the clarity of each substance of the article of the regulatory legislation they formulate. What is meant by the principle of clarity is that every regulatory legislation shall meet technical requirement of the arrangement of regulatory legislation, systematics, word or term choice, and clear and easy-to-understand language to prevent various interpretation during the implementation (Elucidation of law no. 12 of 2011 about the formulation of regulatory legislation).

Based on the discussion above, it can be concluded that the IDEAL CONSTRUCTION OF VILLAGE GOVERNMENT IN ORGANIZING LAND REGISTRATION that is the formulation of the substance of article 26 paragraph (2) item o of Law no. 6 of 2014 about village shall be reviewed. By the review of the formulation of the substance of such article, it is expected that legal certainty can be obtained, so the scope clarity of the regulatory legislation meant in the substance of the article is reached.

## **Conclusion**

Because of less-clarity of the scope of legislation meant in the substance of article 26 paragraph (2) item o of Law no. 6 of 2014 about the village, it is necessary to have the ideal construction of village government in organizing land registration. To arrange ideal construction of village government in organizing land registration, the implementation of the principle of legal certainty is essential to obtain the clarity of scope of the legislation meant in the substance of 26 paragraph (2) item o of Law no. 6 of 2014

about village. Based on the discussion above, it can be concluded that the ideal construction of village government in organizing land registration that is the formulation of the substance of article 26 paragraph (2) item o of Law no. 6 of 2014 about village shall be reviewed.

### ***Suggestion***

For the legislative institution, they need to be more thorough in formulating regulatory legislation, so the quality of the legal product is maintained well because by its urgency, the formulation of regulatory legislation supposed to uphold the thoroughness.

### ***References***

- Amirudin, et. Al. (2006). *Pengantar Metode Artikel Hukum*. Jakarta: Raja Grafindo Prasada.
- Antje M. Ma'moen. (1996). *Pendaftaran Tanah Sebagai Pelaksana UUPA untuk Mencapai Kepastian Hukum Hak atas Tanah di Kota Madya Bandung*. Bandung: Disertasi Universitas Padjajaran.
- Auliyaa Martati. (2018). "Implementasi Asas Akuntabilitas dalam Pendaftaran Tanah Secara Sistematis berdasarkan Peraturan Menteri Agraria dan Tata Ruang/ Kepala Badan Pertanahan Nasional Republik Indonesia Nomor 12 Tahun 2017 tentang Percepatan Pendaftaran Tanah Sistematis Lengkap". *Jurnal Repertorium*, 5(1).
- Danar Irianto. (2015). *Evaluasi Efektivitas Sistem Pengendalian Internal Program Proyek Operasi Nasional Agraria Studi Kasus Pada Kantor Badan Pertanahan Nasional Kabupaten Bantul Yogyakarta*. Yogyakarta: Tesis Magister Akuntansi Fakultas Ekonomika Dan Bisnis Universitas Gadjah Mada.
- I Nyoman Satia Negara. (2016). *Kepastian Hukum Pengaturan Pajak Bumi dan Bangunan Terhadap Tanah Adat di Bali*. Denpasar: Disertasi Program Doktor Ilmu Hukum Universitas Udayana.
- Purnadi Purbacaraka dan Soerjono Soekanto. (1989). *Peraturan Perundang-Undangan dan Yurisprudensi*. Bandung: PT. Citra Aditya Bakti.
- R A. Andria Jayanti, M. Arba dan Hirsanuddin. (2017). "Comparative Study of Land Registration in the State of the Republic of Indonesia and the Republic of Singapore". *Khairun Law Journal*, 1(1).
- Ronny Hanitijo Soemitro. (2004). *Metodologi Artikel Hukum dan Jurimetri*. Jakarta: Ghalia Indonesia
- Soerjono Soekanto dan Mamudji. (1990). *Artikel Hukum Normatif*. Jakarta: Rajawali Pers.
- Sony Maulana Sikumbang, Fitriani Ahlan Sjarif dan M. Yahdi Salampessy. (2015). *Pengantar Ilmu Pengetahuan Perundang-undangan*. Jakarta: Universitas Terbuka Press.
- AFP Dadi. (2011). <http://e-journal.uajy.ac.id/4157/3/2MIH01327.pdf>, accessed on 15 April 2018, at 22.32 WIB.
- \_\_\_\_\_. (2018). <http://setkab.go.id/presiden-jokowi-teken-inpres-percepatan-pendaftaran-tanah-sistematis-lengkap/>, accessed on 11 April 2018, at 10.05 WIB.

\_\_\_\_\_, (2017). <http://www.mediaindonesia.com/read/detail/135625-sertifikasi-serentak-percepat-kepastian-hukum-hak-atas-tanah-bagi-masyarakat>, accessed on 12 April 2018, at 20.37 WIB.

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