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## RESEARCH ARTICLE

### PUBLIC SERVICE ON LAND REGISTRATION BASED ON THE DIGNIFIED JUSTICE

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#### Abstract

There are still remain about 80 million rights of lands in Indonesia that has been regarded as eligible to be registered as formally (the State) recognized rights of lands have yet to be registered according to the existing legislation. The statistical fact has caused some observers to raise a concern that it is an indication of failure (absent) of the State to give protection and guaranty to human dignity, i.e., one of the most fundamental rights of its people; the people's rights to land. In this Article, the situation as mentioned above, also being regarded as a crucial problem that is now being faced by the Pancasila Legal System. To solve that problem, bellow there are some principles and norms on the land registration institution in the Pancasila Legal System which has been provided for it. It is hoped that the legal argument could do justice to the judgement that there are still legal certainties or injustices in the Pancasila Legal System as indicated above.

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#### Introduction:-

One of the acute and serious land issues in Indonesia is related to the problem of protecting land rights (indigenous or state's) through a (State) formal regulated system of land registration. The problem is manifested in the fact that only about a reported 80 million plot of lands has been registered using the State (formal) system and were given certificates of rights to land by the State from about an estimated 160 million rights to plot of lands which has been declared as eligible to be registered according to the existing (formal) legislation in the Pancasila Legal System.<sup>1</sup> There are still remain about 80 million rights of lands which has been regarded as eligible to be registered as formally recognized rights of lands have yet to be registered according to the existing legislation.

The above mentioned statistical fact has caused some observers to raise a concern that it is an indication of failure (absent) of the State to give protection and guaranty to human dignity, i.e., one of the most fundamental rights of its people; the people's rights to land. In this Article, the situation as mentioned above, also being regarded as a crucial

<sup>1</sup> Hadi Setia Tunggal (Penghimpun), *Peraturan Pemerintah Republik Indonesia Nomor 24 Tahun 1997 tentang Pendaftaran Tanah Beserta Peraturan Pelaksanaannya*, Harvarindo, Jakarta, 1999, hlm., iii; who sated that in 1997 there was 55 million plots (parcels) of lands eligibled registered, but only 16,3 million were registered and remained 38,7 were not.

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problem that is now being faced by the Pancasila Legal System. As it is a generally known principle in Indonesia that the Pancasila Legal System has been declared as a dignified system of law for Indonesians; it is the system which aimed at making human (Indonesian people) as human being (*nguwongke wong*); or making human being (its people) as the One Almighty God's (Tuhan Yang Maha Esa's) high-born creature.

From theoretical or philosophical and jurisprudential perspective, the recent action taking by President Joko Widodo (Jokowi) to accelerate the State land registration system have been conducted in order to fulfil his one of his nine prime policies (*Nawacita*). It is expected that all rights of lands in Indonesia would be registered at the end of his tenancy in the presidential office. This could be regarded as the signal that the State does not have any intention to absent from protecting its people and to defend their dignity, as dictated by the Constitution.

To put in the frame of the title of this Article, a successful purpose and aim of the land registration system would be understood as a form of successful public service, particularly in the field land rights. The Success will be bring about the complete giving of legal certainty on the rights of lands (indigenous and State) which are holding by their owners as well as legal protection to persons possessing those rights to land. Unfortunately, the numerical fact on the registered and unregistered land rights as shown above could be seen as the half full public service of the Pancasila Legal System. As it has only temporarily managed so far in giving legal certainty to about 50 % (not 100%) of rights to lands in the territory of the Unified Republic of Indonesia (NKRI). Some may argue that this is perhaps a gross contradiction or violation to the promise in the Constitution. It has been stipulated in the Indonesian Constitution that the State is formed in order to give a total protection to all of its people; meaning to include protection all of the rights to land (indigenous and State's) and the people who own them.

As shown from the statistic mentioned above, there are still remain about 80 million owners and proprietors of lands in the Indonesian territory which has already been eligible to be registered and having their formal legal protections; although actually, for some reasons with the modern system of land registration, still remain a big portions of the people's rights are stranded in the state of legal uncertainties, neglected or perhaps potentially being deprived off rights and marginalized from the public service.

Therefore it is perhaps not really a wrong, if one could perhaps argued that from the factual or sociological (statistical) perspective as described above, there still a strong potentialities in the Indonesian territory and its legal system, the deprivation of land rights of about 80 million and the people who own or possessing them. Contradictory to the statistical facts, constitutionally, as it has been clearly stipulated in the State of Indonesia Basic Act (UUD 1945) a promise of the State and a sign of dignified justice, to provide a complete protection to all of one's birth place (including people's traditional rights of land); no possibilities for even one citizen being neglected of rights by the State of the Republic of Indonesia.

To solve that problem, bellow there are some principles and norms on the land registration institution in the Pancasila Legal System which has been provided for it. It is hoped that the legal argument could do justice to the judgement that there are still legal certainties or injustices in the Pancasila Legal System as indicated above. All the principles of law are recognizing institution of land registration in Indonesia. From the perspective of those principles, the Indonesian System are apt to the need to protect of all rights to land, including those traditional (indigenous) or Adat rights of land. Although it is a still necessary to comply with the formal or solemnity requirements according to the regulations in the Pancasila Legal System. Based on that idea, the term legal certainty of rights to land could be meant, that the Indonesian institution of land registration is a dignified institution. As it is based on the idea of dignified justice, the formal Indonesian institution of land registration must be regarded as an institution which make human as human being (*nguwongke wong*)<sup>2</sup>.

The institution of land registration in the Pancasila Legal System is a dignified institution of law. Since, the institution is concerned mainly with the protection of the people's rights of lands (including indigenous) in the Indonesian territory, as declared by the UUD 1945. Although, as mentioned above, statistically there are still many rights of land (indigenous) that has not been registered according to the formal regulations. As a result of it there have been many people who have not been given certificate of land rights. Although with the system in tack, the

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<sup>2</sup> Teguh Prasetyo, *Keadilan Bermartabat: Perspektif Teori Hukum*, Cetakan Pertama, Nusamedia, Bandung, 2015.

owners or proprietors of any rights to land, however, according to the dignified justice idea, can not be arbitrarily deprived of their rights.

The Pancasila institution of land registration is still upholding the principle of law, i.e. to put dignified justice as its first consideration, including the formal legislation as the basis of rights of land. It has also been the principle of law, since many of the Indonesian people are the owners and proprietors of land even though they have only been holding kind of letters of land rights traditionally (indigenously) issued under Adat law such as: *kekitir* (West Java), *girik* (Central Java/and the Special Province of Yogyakarta), *pipil* and *petuk* (East Java) and other forms of traditionally recognized land rights outside the Java island.

#### **Background on the Problem of Land Registration:-**

It must be acknowledged that, based in the Decision of the Supreme Court of the Republic of Indonesia Number 34/K/SIP/1960 dated 10 February 1960, many has come to term that an indigenous or traditionally letter known as *girik* and its similar kind is not a legally sign of proof or legal evidence to the ownership or any rights of land. The types of documents of land as such, particularly *girik* in that dispute stated in the Decision of the Supreme Court of the Republic of Indonesia Number 34/K/SIP/1960 dated 10 February 1960 was only regarded as the receipt of payment for Land Tax. This tax was formally called *Ipeda*, or now called Tax for Land and Building (*PBB*). However, the opinion made by the Court in the Supreme Court of the Republic of Indonesia Number 34/K/SIP/1960 dated 10 February 1960, are needed to be digested carefully and with precision. It would be dangerous and could cause a gross violation of rights if the decision as such is made as the sole legal basis for the administration of justice, and to judge whether a person is legally having a rights to land or not having it.

Every jurist understood that, in fact, according to the Indonesian Civil Code (*KUHPerdata*), it has long been recognized that apart from letters, any letters formally made (authentic deeds) or underhand letters (deeds); there are still another instruments of proof or eligible for evidence by the court. The Letter (in this particular case; the certificate of formally registered land issued by the National Land Body) is only one from the five instruments of proof in all, as recognized by the law. Another four of the instruments of proof according to the Indonesian Civil Code (the Civil Law of Evidence) are: witnesses, assumptions, acknowledgement, oath of promise<sup>3</sup>.

Not surprisingly, as a result of learned from the lesson of the hallmark case mentioned above is that at the same time the Government still considering the status of the indigenous land rights existing in those types of indigenous letters issued traditionally by the village authorities in the past as proper document of rights. It has also been push forward in the implementation of the formal land registration system. Consequently, the formal system of land registration is to be implementing without arbitrarily setting aside the status of the land rights arising from the indigenous or traditional (Adat) way of recognizing legal rights of land. It has been suggested, that apart from the Supreme Court Decision mentioned above, the Government must implementing a conversion of the formerly recognised indigenous or traditionally land rights with the formal land registration system under the dictated of the Agrarian Basic Law<sup>4</sup>.

Therefore, if the formal (State's) land registration system based on the dictate of the Indonesian Basic Agrarian Law has not been fully implemented, consequently the Government is required to use its discretionary power. The discretionary power must be based on the traditionally recognized land rights known by the people (the living law) and manifested in all types of land letters issued traditionally or indigenously across the Indonesian Archipelago. This principle of law is also the principle of Adat law. Adat Law is still recognized as the basis for the Indonesian Basic Agrarian Law.

In fact, until recently, there are still recognized in the Indonesian societies that a traditional or indigenous letter of land rights such as *petukbumi*, has been accepted by the Bank as a collateral for a loan of money agreement.<sup>5</sup> Although it must be clearly acknowledged that still before the disbursement of credit by the creditor, there has been many processes to make sure that the status of the *petukbumi* letter and the like letters are genuine documents of

<sup>3</sup> Pasal 1866 KUHPerdata-Indonesia.

<sup>4</sup> Sekretariat Bina Desa/Indhrra, *Tanya Jawab Hukum Tanah*, Sekretariat Pembinaan Sumber Daya Manusiawi Pedesaan dan Indonesian Secretariate for Development of Human Resources in Rural Areas, Jakarta, 1981, hlm., 27.

<sup>5</sup> *Ibid.*

ownership of rights to land and the letters will be converted latter into a formally certificate of land under the formal land registration procedures.

It is worth note here, that apart from the situation mentioned above, the implementation of the formal land registration system in the Pancasila Legal System must be conducted with care, since in practice there are still matters to be considered. Facts have shown that despite the effort conducted by the Government “to left behind” all the traditional institutions of laws or one may called it as a local wisdom in the Indonesian system, and one of them is the land registration system discussed in this Article; in the past, in the District of Boyolali (Central Java), there were thousand of farmers in one village who were holding traditional or indigenous letters of land rights. They have paid the fees for the administration to register their lands and also in order to be issued the formal certificate of ownerships of land (*biaya pendaftaran tanah*) or popularly known as *pengurusan sertifikat tanah*, based on the agreement reached in the village deliberation (*rembuk desa*), and it has also been approved by the Head of the District.

However, after waiting for years, their lands were not formally registered and no formal certificate of ownership to lands has been granted for them.<sup>6</sup> This fact happend despite the real and present condition that those people in Boyolali at that time, or everywhere in Indonesia recently, were mainly consists of small people (*wong cilik*), as they have been living under the poverty line. Now, this situation could be resolved through the letter of acknowledgement from the Head of the Village, stating that they have no money to pay for the conversion of rights from traditionally recognized rights of land to the (State) formally recognized system of land registration. There is also another problem in the Indonesian societies today. There has been lands with formally recognized system status, however, many of the certificate of ownership of lands are holding not by the owner (and majority of them are “small farmers”) but by the third parties, and this will potentially create the deprivation off rights.

#### **Forms of Indigenously Recognized Land Rights in Indonesian Societies:-**

There have been many kinds of letters traditionally or indigenously (outside the formal land registration system of the Republic of Indonesia) recognized by the societies across the Republic of Indonesia. In rural areas and most likely in some certain urban areas of Indonesia, there are still forms of letters traditionally representing an ownership or rights of land. This document of “ownerships” of land generally know as *letter “C”* and *letter “D”*. Legally, until now, there have no written legislation was made to prohibit or criminalizing this form of manifestation of “ownership” of rights to lands.

The *letter “C”*, for example, has been accepted as “a short of custom act” (*undang-undang kebiasaan*). It is traditionally in force, since it is accepted traditionally by the people, as a proof of ownership of rights to land. All of the information of the *letter “C”* is taken from a list that is kept in a book by the village or Kelurahan authority. The book containing this traditionally registered of the rights of land and is named as village book (*buku desa*). *Letter “C”* containing notes of the ownership of rights of land written in the village book. Among other things, the book contain names of the people who own land in the village that attending the village meeting. Apart from *letter “C”*, there are also *letter “D”*. This *letter “D”* is the receipt for tax payment of land (*Ipeda*) and now *PBB*.

In remote and rural areas of Indonesia, the lands which was registered in the Book and with the information quoted in the *letter “C”*, is most likely, are land with the right of use (*hak garap*) or in this case could be considered as the right of “ownership” to use (*hak milik untuk menggarap tanah*) which are holding by mainly “small farmers” (*wong cilik*), mainly living in the villages; and most of them, are people who are called the pioneers in open a forest.

In the Nortwest of Central Java Province, in the area called *Pegunungan Kendeng* for example. Recently this area has been well known since the mainstream and electronic mass media publications have put it in the headlines news as the people there were made a strong “resistance” to their Governor Ganjar Pranowo.<sup>7</sup> Governor Pranowo have

<sup>6</sup> Sinar Harapan, 22 Januari 1979; Bdnk., Harian Merdeka, 4 Agustus 1979.

<sup>7</sup> Governor Ganjar, which has been ellected at the platform for side with the “small people” (*wong cilik*), in the contrary appear to have been betraying those the *wong cilik* in *Pegunungan Kendeng*, as many of the *Pegunungan Kendeng* people especially those small farmers have been living inconvenience since then. Some of them are defending lands and environment, as their land is depending on the water that was captured by the lime hills in the farm areas there.

been insisting to give a licence for building a Cement Plantation in the area. The traditionally recognized land rights in the *Pegunungan Kendeng* as such have been named as *norowito*.

It has been a general knowledge that, the *norowito* rights of land, is the rights of land according to the Javanese Adat Law. This Adat Law is still being recognized by the Indonesian Basic Agrarian Law. It is reconised that *norowito* could be converted into status as the rights of ownership of land. According to the formal regulated Indonesian Basic Agrarian Law, the rights could be converted into the rights of ownership (*tanah milik*). It has been provided for in the Indonesian Basic Agrarian Law that in order to convert the *norowito* into the ownership of rights to land, it must follow the procedures stipulated in the Indonesian Basic Agrarian Law. This conversion from the *norowito*, as the traditionally or indigenously registered or recognized land rights to the formal registration of land system is possible. Since *norowito* is recognized by the people, in particular, the local people, as the rights of land. Therefore it could be allowed to follow the procedure to be converted into a (State) formally recognized land rights under the Indonesian land law, in particular, the Basic Agrarian Law.

The same will also be with a type of other rights to land in Adat Law. One of them is called *perdikan*. The right of *perdikan* is a type of right of ownership to land. That traditionally recognized or registered rights is given to those who collect the harvest from the plots of lands own by *Landlord*. A portion of the collection will then sold. The money earn (proceeds) will be deducted by the collector as a gift for his or her rights. This rights is given to village officers, and this officers are considered as honourabled officers in the traditional Javanese kingdom society in the past. The rights of *perdikan* is still folowing the feodal system.<sup>8</sup> The right of *Perdikan* is also given to those who have been doing any work to maintain all of the religious institutions such as places of worship, graveyards of the kings and his family and the like.

The right of *perdikan* is also granted by the king as a distinct rights of land to some units of village on several conditions. That the granted unit of village has done a task from the king to maintain the interest of a religious institution. The lands with the recognized or one may called it “registered traditionally” rights of land of *perdikan*, as a legal institution in the Adat society, could certainly be changed into a rights of ownership of land under the modern formal (State) system of land registration of the Indonesian Basic Agrarian Law. The changing of *perdikan* might be into another form of rights. For certain reasons, the recognition of the adat institution of *perdikan* has seen as becoming weakened, at this point of reason, it sends a signals that the traditional rights needs to be replaced by the Nasional (State) system required in the Indonesian Basic Agrarian Law.

Different with the right of *norowito*, the changing of status of the land of *perdikan* as a demand to “release” the binding status of the symbol which is suspected to be feudalism into the right of ownership according to the rezim of the Indonesian Basic Agrarian Act have to be proceeds with the regulations governing land-reform. In other words, all the lands of *perdikan* as such must first be taken over by the Government. Later, the Government is to take step with the redistribution process. This is normally granted to the farmers who have no land. The procedures to issue a certificate of ownership for *perdikan* as such is follow the normal procedures according to the regulations under the regime of the Indonesian Basic Agrarian Act.

With regards to the significant of the land registration in order to achieve the legal certainty for the holder of rights of lands, and also the certainty of the locations of the lands plus the demand to have a discipline (in order) to the administration of land rights, it is important to discuss bellow a problem called potential “legal uncertainties” that might be arise within the society if there are no proper and modern system of land registration.

In the past, with regards to the payment of the land rent made by the sugar plantations in Java, it is always begin with the traditional method of mass measurements of lands. The land measurement system, or could be understood as a part of “traditional land registration”. However, the traditionally administered system is made for the sake of land rent by those sugar plantations. The system is called *klantingan*. Problem arised since seldom *klantingan* produced a status of land (an object of lease), that is not in accordance with information that was written in the *letter*

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<sup>8</sup>There are a grove diferent between Feodal, dompere to the feudalism. As in feudalism it is to mean an ideology, it is bad, or evil. Meanwhile, feodal is a system of law or an institution of the law. The Indonesian Basic Agrarian Law has already do away with the feodal system, but it must be understood as to meand do away with the content of feudalism in the fedodal system since it has been regarded that ideology is dangerous to society, but it is not with the Law., the Law is not an ideology.

“C”. As a result, there are owners of lands, generally “small farmers”, although if they were to be compared with the English system of feudal law of land would be termed as *Landlords*; would not receive their rights to acquire the land rent. Certainly, this created pecuniary damage to those *Landlords*.

In order to seek justice from those sugar plantations, the “neglected small” *Landlords*, mainly in Java, and perhaps some were also happened in Sumatera would usually chose several methods for settling their disputes with the sugar plantations. Firstly, they (those small *Landlords*) would facing the sugar plantations directly and demanding their rights of land rent. Second alternative, if those sugar plantation refused to pay rent for those “small *Landlords*”, those small *Landlords* would then refuse to planting and cultivating sugarcanes on their lands. As usual, sugarcanes were provided for by the sugar plantations. Thirdly, if those sugar plantations insist to plant the sugarcanes at the “small” *Landlords*’s land themselves, those small *Landlords* will lodge legal (tort), not criminal, action for those sugar plantations to the head of the district public prosecutor (*Kejari*).

Furthermore, there was also problems in the past that would be worth mention at this point. Despite those background problems in land registration as a manifestation of public services in the Pancasila Legal System. Despite the “orchestrated” doubt created for on the status of traditionally (indigenously) issued letter of land rights, in the past, there was village official in the District of Karawang (West Java) who manipulated the compensation for lands rights (proofed by the traditionally issued letter of lands) which were took over by the government for Jatiluhur Irrigated Agricultural Zone (*Prosijat*). The *modus operandi* of the village official was as follow. He made a fake list of land owners, and retained certain traditional or indigenous type of letters of land rights own by many victims (small farmers).<sup>9</sup>

All of the background problem as enlisted in the description above have risen a great concern of the existing Government on the important and strategic of the land registration policy, to not abandoning the genuine legal status of all traditionally issued letters of land rights to implement the form of public service to the Indonesian people, and in this case the implementation of the Government Regulation Number 24 of 1997 on the Land Registration which is in accordance with the spirit of dignified justice that would be described further bellow.

#### **Regulated Land Registration in the Pancasila Legal System;-**

Under the Dignified Justice Theory perspective there is an important postulate which stated that all of the institution of the law in every legal systems, would only be found in the spirit of the people (*Volksgeist*) of the system in question. The most concrete manifestation of the *Volksgeist* in a legal system therefore, would only be found in two main sources of laws. Firstly, in the existing and enforceable rules and regulations in a legal system. Secondly, in the judges decisions (*yurisprudensi*) which were having permanently binding force or landmark status. This postulate of the Dignified Justice Theory could also be implemented in analyzing the law governing land registration in the *Volksgeist* Indonesia or the Pancasila Legal System.

Apart from the Judge-Made-Law (*yurisprudensi*) mentioned in the earliest part of this Article, if one have to observe the Government of the Republic of Indonesia Regulation Number 24 Tahun 1997 on Land Registration as the most concrete manifestation of the *Volksgeist* of Indonesia, bellow there are some rules and principles of law governing formal (State) land registration that need to be look at. To be sistematic, in relation to the issued of this Article, the principles and rules of law governing the running of the land registration as a form of public service, must be linked with the Law Number 28 of 1999 on the Clean and Free from Corruption, Collution, and Nepotism for Organization of the State.

Structurally it has to be made clear at this point the legal reason behind the making of the Government Regulation on Land Registration as mentioned above. It has been stipulated in Article 19 of the Law of the Republic of Indonesia Number 5 Tahun 1960 on the Basic Agrarian Law: “that in order to provide a legal guarantee, the Government has to facilitate a land registration in all of the territory of Indonesia according to rules sated in a Governement Regulation”. In order to observe the dictate of the Basic Agrarian Law as mentioned above, the Government has issued and implementing two Government Regulations.

The first Government Regulation, has recently been revoked and replaced by the second one. There have been feeling of disapointment to the first Government Regulation that was numbered as 10th and was issued in 1961.

<sup>9</sup> Harian Merdeka, 3 Agustus 1979.

Since its came into force in 1961 until its 36 years implementation, up until the making and enforcement of the second Government Regulation in 1997. It has been proofed, such as mentioned above, that there were still 50% of parcels of land and the rights of them in all of the territory of the Republic of Indonesia was not formally registered under the regime of Government Regulation Number 10 of 1961. As stated above there has been existing with the formal land registration system many system of land rights that live under the traditional or indigenous (Adat) system.

As a result of that situation, the Indonesian Government has came to term with the idea to reform that Government Regulation Number 10 of 1961; it is recognized in the second Government Regulation that the first one was not fully support of reaching the real target stating in the national development programme<sup>10</sup>. Based on that consideration, on the 8th of July 1997 the Indonesian Government issued the second Government Regulation on Land Registration.

It is stipulated in that second Government Regulation that the Regulation is made in order to utilise all of the sophisticated equipments such as computer and information technology and telecommunication system which was not recognized, or even thought of, in the first Government Regulation. Moreover, it is also stipulated that the second Government Regulation is felt as a type of laws and regulations in the hierachical structure of the Republic of Indonesia or Pancasila Legal System<sup>11</sup> made specifically in the field of land law which having a more legal certainty. Since, in this second regulation it was stated explicitly the status of certificate of rights (ownership) of land to give legal certainty and clearance to the Indonesian society.

Apart from the specification as mentioned above, in the second Government Regulation it was also stated that that particular law has adopted a more government wisdom and understanding on law to protect the ownership of rights to heritable property (*kepemilikan benda tetap*). It is shown by the formulation in the Government Regulation that there is still open a possibility, in case of land who has been registered under the section of ownership to be question before the court on it legal validity.

Eventually, if the contender or the plaintiff managed before the court to show a strong case that not the 20 years registered land but his document or evidence is stronger, the plaintiff could be granted a right to reposing his/or her rights of land. Under the system of the second Government Regulation of Land Registration, for those who are having similar case would be given a five years period to proof their true or genuine ownership of land. According to the explanation mentioned in the Government Regulation, this is an example of “the in orde administration of land registration”, one of the spirit of law or the *Volksgeist* of Indonesia which is reflected in the second Government Regulation on Land Registration Number 24 of 1997.

#### **The Nature of Land Registration in the Pancasila Legal System:-**

It is formulated in the the Article 1 section (1) of the Government Regulation Number 24 of 1997 that land registration is a series of actions done continously by the Government, sustainably and orderly, and to include collection, processing, registering and presenting as well as maintaining the phisical and juridical data, in the form of cadastral map and list, on the plots or parcels of lands and unit of apartment building and also including with them the granting of proof letters on the ownership and possession to the lands which has having the status of their rights and ownerships on the units of the apartment buildings with every burdens set on them.

The ontological formulation or the nature of the land registration in the Government Regulation as mentioned above has ended the searching of meaning of the the term land registration which have for quiet a very long time referred to the lexical (not juridical meaning) meaning understood in the Dutch word i.e., *Cadastre*, which in turned was referred to the Latin meaning in the Roman Legal System, i.e., *Capitastrum*, done by writers in the past. The meaning for term *Capitastrum* in Latin is very important fo a registration or *capita* or a unit which was specifically made in order to count or estimate a tax price by the fiscus on the taxt object holding in the Roman nation in the past (*Capotatio Terrents*)<sup>12</sup>. It appears that this lexical significant in the term land registration, is also seen in the

<sup>10</sup> Consideration Section letter (c) of the Government Regulation Number 24 of 1997.

<sup>11</sup> Elaborative description on the hierachical of the laws and regulation in the Pancasila Legal System is discussed in: Teguh Prasetyo, *Sistem Hukum Pancasila (Sistem, Sistem Hukum dan Pembentukan Peraturan Perundang-Undangan): Perpektif Teori Keadilan Bermartabat*, Cetakan Pertama, Nusamedia, Bandung, 2016.

<sup>12</sup> A. P. Parlindungan, *Pendaftaran Tanah di Indonesia*, Mandar Maju, Bandung, 1990, hlm., 18-19.

dictation stipulated in the Indonesian Basic Agrarian Law for the Government to undertake land registration in all of the territory of the Republic of Indonesia.<sup>13</sup>

Land registration in Indonesia is conducted by the National Body of Land<sup>14</sup> using two methods. The first method is that land registration is conducted simultaneously, which to include all object for land registration which not being registered yet in the whole or in a village/ward or sub-district of the Indonesian territory<sup>15</sup>. The second method is sporadic land registration, which means registration of land on one or several objects of land registration in a section or part of a section of a village/ward or sub-district undertaken individually or massively.

According to the formulation in the Article 19 section (2) of the Indonesia Basic Agrarian Law, the law that hierarchically above the Government Regulation Number 24 of 1997, there are three part of activities on land registration. Firstly, it is the activities such as measurement, land cadastering, and registration on land buuk. Secondly, activities such as: registration of rights and their transmissibility. Thirdly, the granting of letters for the proofing of any rights to lands, and their status as the strongest evidence of rights to lands. The land reform policy as manifested in the Government Regulation Number 24 of 1997 among other things are also to include the ascertaining of doubtful aspect found in the former Government Regulation Number 10 of 1961. Those doubtful aspects has been described above, such as several traditional or indigenous (Adat) letters of rights of lands, and also the principles and purposes of the land registration.

It has been clarified in the Article 1 Number (6) of the Government Regulation Number 24 of 1997 that bahwa by fisisal data of land is to mean declaration about the location, boundaries and width of registered lands and units of apartments, and also including in them declaration on the buildings and part of buildings on on them. Meanwhile, by the term juridical data is to mean, declaration on the legal status of the registered parcels of lands and also the legal status of the registered units of the apartment buildings, their holders and also third parties right that burdening those rights.

#### **Principles and Purposes of Land Registration in the Pancasila Legal System:-**

There area principles and purposes of the land registration policy as a form of public service in the Pancasila Legal System. Among other things, as mentioned in the Government Regulation Number 24 of 1997 is that: land registration has to be conducted with the principles of simple, save, affordable, technologically up to date, and transparent<sup>16</sup>. To reach such a principles, the land registration policy must make sure that it is conducted in order to give legal certainty and legal protection to the holders of rights of every plots or parcels of lands, and also to the holders of the rights of units of apartments buildings and also other registered rights so that those holders of rights could easily proof their rights as such.<sup>17</sup> The most concrete manifestation of legal certainty and also legal protection could be obtained through the granting of the certificate of rights to lands and also to the units of apartments as well as other registered rights.

To fulfill such an objectives, Land Office (BPN in the regional areas) who has the mandate as the state's administrator in this case to implement the policy in land registration, is demanded to pay attention to the principle of coordination with their authorities such as the Governor and other authorities in every area in question. This obligation is in line with the dictate of the law, as stated in the Article 3 of the Law of the Republic of Indonesia Number 28 of 1999. This law has sent a signal requirement on legal certainty, in order in the implementation of state policy, principle of public interest, transparency, proportionality, professionalism and also accountability.

Land registration is also aim at providing information for parties who has related interest and also to the Government in order that they may have an easy access to have any data which is needed for the legal relationships in the society in relation to the object of lands, units of apartment building and any rights related to those object of legal relationships. This is the aspect of public interest in the aim of land registration policy. In land registration,

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<sup>13</sup> Supardi, *Hukum Agraria*, Cetakan Keempat, Sinar Grafika, Jakarta, 2010, hlm., 152.

<sup>14</sup> Formulated in the Presidential Regulation of the Republik Indonesia Number 19 of 2006 on the National Land Body. In the Article 3 letter (b) Perpres Number 10 of 2006 as such was formulated that the National Land Body (BPN) is to organise function to do the land registration in order to serve legal certainty.

<sup>15</sup> Article 1 Number (10) PP Number 24 of 1997.

<sup>16</sup> Pasal 2 PP Nomor 24 Tahun 1997.

<sup>17</sup> Pasal 3 PP Nomor 24 Tahun 1997.



public could have an easy access to obtain any information relating to the physical and juridical data relating to registered lands and also the registered units of apartment building and any registered rights related to them.

Apart from the purposes that was mentioned above, land registration is also aim at creating order in lands and related rights affairs. This purpose is found in the Article 4 of the Government Regulation Number 24 of 1997. It is stipulated there that land registration is undertaken in order to record every parcels of land, and also every unit of apartment building and any rights pertaining to them. Regarding the principles of law that demand the proper working of the public service mentioned in the Law Number 28 of 1999, it is important to notice some of the principles stipulated there.

There are principle of transparency, apart from the other principles of public service in implementing the land registration policy. From the point of view of the principle of transparency in the Pancasila Legal System, the law has demanded that the public service, in particular those who are involved in the implementing the land registration policy. They must be willing to give public an unlimited access to the information with regards to all of the rights to the registered lands and also the registered rights to the units of apartment building and the related rights with the genuinely and without discrimination without neglecting the principle of protecting the rights of privacy and also any confidential information own by the public or the State. With regard to the principle of simple procedures in the implementation of land registration policy, it has been explained that the procedures in the land registration must be easily understood, follow and used when they are needed in the process of land registration. All of these requirement have to be implemented in the land registration process.

Concerning the principle of affordability, this principle is governing the land registration process in order to give priority to the section of the society who has less economic capacity to pay the service in land registration process. To implement this principle the state must provide a kind of subsidy granted to those who have to pay for seeking their rights to be registered according to the Government Regulation as mentioned above.

### **Conclusion:-**

This Article was written for certain, not to deconstruct (to completely erasing or against) or to do with a subversive movement against the modern institution of the law on the land rights registration as the positive system in the Pancasila Legal System or the Indonesian Legal System, as regulated in detailed and formally in the Government Regulation Number 24 of 1997, as the mandate from the Indonesian Basic Agrarian Law. Not at all.

However, this Article is inviting the audience to an academic discourse, in order that the Pancasila Legal System, in particular the system which governing the land rights registration as a system of registration with dignity; or dignified system of land rights registration. Therefore it is important to note that in the name of formalism one, especially the Indonesian authorities in this particular area of law, or those who are implementing the public service in land registration in Indonesia would not abandoning or simply and easily declaring a state of war against all the indigenous or traditionally recognized land rights in the Indonesian societies across the archipelago.

As a form of public service based on the Indonesian Basic Agrarian Law, the Indonesian System of Formal Land Registration have to make sure that it provides a legal certainty on all the rights of lands, including in it the rights of law which is called in this article as the people rights of lands. Therefore, the formal system of land registration as a form of public service conducted by the Government of the Republic of Indonesia could not do without considering the justice in the traditional (indigenous) land registration system, under Adat Law.

It is the task of the Government of the Republic of Indonesia in its modern way of administering justice on the land registration to make human as a human being (*nguwongke wong*), and making sure that in implementing policies they will not deprive human (the people of the Republic of Indonesia) from their dignity (rights) as human being. This is a condition in the Dignified Justice Theory; to keep the law, i.e. Government Regulation Number 24 of 1997 as a law that serves the aims stated in the Pancasila.

In order to maintain that idea of modern or dignified system of land registration in the Pancasila Legal System, in the implementation of the Government Regulation Number 24 of 1997 must not disregard all the principles and norms or the Indonesian *Volksggeist* as mentioned above; those institutions regarding the modern or dignified justice land registration system are principally the principles in Adat according to the Pancasila Legal System.

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