



ISSN Print: 2541-5298
ISSN Online: 2541-6464

SRIWIJAYA Law Review

Editorial Office: Faculty of Law, Sriwijaya University, Jalan Srijaya Negara,
Palembang, South Sumatra 30139, Indonesia.
Phone: +62711-580063 Fax: +62711-581179
E-mail: sriwijalayawreview@unsri.ac.id | sriwijalayawreview@gmail.com
Website: <http://journal.fh.unsri.ac.id/index.php/sriwijalayawreview>

Legal Assurance and Legal Protection in Land Registration in Indonesia

Suharyono*

Abstract: Legal assurance to protect the owner of the land title has been the main objectives of the 1997 Government Regulation No. 24. However, in reality, the objectives above cannot be spelled due to the negative publication system of land title registration regulated by the regulation above. The loophole the system has, *inter alia*, concerns with the actual or the correctness of land site or the physical data of the land. As a result, a conflict will not be prevented between or amongst the true land deed holder, land rights holder and the third party. If the case is brought before the court, the further consequence is that the verdict will declare the cancelation of or invalidity of the land deed. Then the legal status of the land deed will become uncertain and landowners will lose their rights without getting any protection from the State. The problem raised in this article regarding the negative system of land registration in the 1997 government regulation no. 24 does not provide legal protection for the landowner who has already land certificate. The results of the study showed that there were two different values of legal certainty and legal protection manifested in the Government Regulation No. 24 of 1997 and those of legal certainty and legal protection as mandated by the 1945 Constitution of the Republic of Indonesia. Therefore it is not superfluous to state that legal certainty and legal protection are intended and regulated by Government Regulation No.24 of 1997 which is in contradictory to the manifested value of legal certainty and legal protection guaranteed by the 1945 Constitution.

Keywords: Legal certainty; legal protection; land rights, and negative publication system of land registration.

ARTICLE HISTORY:

DOI: 10.28946/slrev.Vol3.Iss1.118.pp48-58

Received: Feb 21, 2018;

Reviewed: Dec 19, 2018;

Accepted: Jan 10, 2019;

Published: Jan 31, 2019.

* *Ph.D Candidate, Faculty of Law, Sriwijaya University. Suharyono & Associates Law Office Palembang.
E-mail: lawoffice.suharyono@gmail.com*

INTRODUCTION

The concept of land¹ if viewed from the perspective of the State Ideology of *Pancasila*²

may involve the philosophical, political and sociological values. As a value, the concept

Indonesia, which has a vast land, has made land issues as one of the most urgent issues compared to other issues. As a result, after Indonesia's independence, the priority thing the national leaders did was a program of "land reform" project marked by the promulgation of the 1960 Law No. 5 concerning the Basic Principles of Agrarian, hereinafter abbreviated as BPA/ UUPA. See also: Achmad Rusyaidi, *Pengadaan Tanah Untuk Kepentingan Umum: Antara Kepentingan Umum dan Perlindungan Hak Asasi Manusia*, Jakarta: Kencana, 2009, p29.

² Tim Reality, *Kamus Baru Bahasa Indonesia*, Surabaya: Reality Publisher, 2008, p294. The word ideology is defined as the understanding, theory and purpose of a person; systemic concepts that are used as a basis for opinions that provide for direction and purpose in life.

¹ In the history of human civilization, land is regarded as one of the most valuable treasures and has ceaselessly provided complex problems. In-

of land raises a question whether it can be viewed as the commodity or as an asset.³ To answer these questions, one should trace the concept of land when Indonesia was under the Dutch and British administration. In addition, one will find that the question of land today has its root from the colonial time where the land was regarded as both commodity and tradable goods.⁴ However, this view, in reality, is not in contradictory to the fact that for the Indonesian indigenous people the land has a magic character and is not seen as tradable goods nor does it as a commodity. The dualism of views over the land has remained valid until the present time.⁵ The further impact of dual views above as Mukhsin⁶ stated that the impact of the colonial view toward the land has changed the traditional outlook over the land and has shifted the feature of the agriculture to urban and industrial and even global. The problem rises does not result from the changing of social feature above but it is the question dealing with the legal assurance of the land

when the status of land ownership has been registered to the National Land Board (NLB/BPN). Herein, once the land is registered to NLB according to the negative system, the publication of registered land will become a requirement. Under this negative system, the role of the authority (the State) is passive for it only examines the land documents the applicant submitted. As a result, this system does not put any responsibility to the authority if the submitted documents are faked. This kind of system has some loophole for the other party to take advantage to claim the status of the ownership of the land through the submitted documents if this is the case, a conflict over the land is unavoidable. In other words, the land certificate issued by the NLB has no legal assurance if the case is brought before the Court.⁷ This paper concerns whether the land is viewed from the policy implementation⁸ as a commodity, tradable goods, or assets. Under the policy implementation there is a contradiction between the two systems as applied in land registration when one applies for getting a land certificate. The objective of having a land certificate, beside it is as a proof

³ Eko Prasetyo, 2004, "Kapitalisme dan Neoliberalisme Suatu Tinjauan Singkat Ekonomi Politik," *Journal Al-Manâr*, (1), p18. See also: Muhadi Sugiono, *Kritik Antonio Gramsci Terhadap Pembangunan Dunia Ketiga*, Yogyakarta: Pustaka Pelajar, 1999, p71.

⁴ See: The consideration letter (b) of the 1960 Law No. 5 concerning The Agrarian Basic Regulations states that agrarian law that is still in force today is partly structured based on the goals and the principles of and partly influenced by the colonial government. As a result, it collides to the interests of the people and the State in completing the current national revolution and the global development.

⁵ James Petras dan Heltmeyer, *Imperialisme Abad 21*, Yogyakarta: Kreasi Wacana, 2013, p37.

⁶ H.Muchsin, cs., *Hukum Agraria Indonesia dalam Perspektif Sejarah*, Bandung: Refika Aditama, 2007, p50. See also: Arie S. Hutagalung, *Tebaran Pemikiran Seputar Masalah Hukum Tanah*, Jakarta: Penerbit Lembaga Pemberdayaan Hukum Indonesia, 2005, pp369-370.

⁷ See Art. 1338 The Civil Code which adheres to the principle of legal certainty and also referred to as the principle of *pacta sunt servanda*. This principle is related to the consequences of the agreement. This principle also to which a judge or third party must respect the substance of the contract the parties made, as befitting a law. They may not intervene on the substance of the contract the parties made.

⁸ Etymologically, the term policy originates from Greek, Sanskrit, and Latin. Where the term policy has the meaning of dealing with public or government problems. At present the policy is known as decisions made by a government institution, which aims to resolve the problems that occur in the community in a country, see also: William Dunn, *Pengantar Analisa Kebijakan Publik (Edisi II)*, Yogyakarta: Gadjah Mada University Press, 1999, p51.

that the land has been registered to the NLB, is as a legal assurance for land certificate ownership. Unfortunately, according to the Government Regulation No. 24 of 1997 concerning the Land Registration⁹, it applies the negative system of land registration¹⁰ causing what the so called legal injustice for the land certificate holder. The reason is that the Court will revoke the status of the certificate ownership if the land is in dispute over the land certificate brought before the Court.¹¹

With regard to the land registration, there are a number of laws and regulations applied in Indonesia, such as The Law No. 5 of 1960 on the Basic Principles of Agrarian; The Government Regulation No. 24 of 1997 on the Land Registration; Regulation of the State Minister of Agrarian/Head of National Land Board No. 3 of 1997 concerning provisions on the implementation of the Government Regulation No. 24 of 1997 regarding land registration. Legally speaking, these legal instruments have provided legal guarantee and legal certainty for the land right holders. The legal condition above is paradox to the reality of at least 45 lawsuits of land rights certificate lodged in The Palembang

State Administrative Court.¹² Out of the 45 cases above, there were 32 cases concerning the land certificate revoked by the decision of the State Administrative Court of Palembang. A part of that, there were also 87 land lawsuits and 12 cases decided by the Court above where the land certificates were declared illegal and had no legal binding. Based on the background discussed previously, the following are the problem and the discussion.

Problem

The negative publication system of land registration as it is manifested in the Government Regulation No. 24 of 1997 has no legal certainty and legal protection for the owner of land certificate.

ANALYSIS AND DISCUSSION

Under the Chapter X on the Closing Section of the Government Regulation No. 24 of 1997, the government explicitly revoked¹³

⁹ Hereinafter cited as the 1997 GR No. 24.

¹⁰ Indonesia, The 1960 Law No. 5 on The Agrarian Principles, The 1997 Government Regulation No. 24 on Land Registration, The 1997 Ministry of Agrarian No. 3 on the Implementing Regulation of the 1997 Government Regulation No. 24 on Land Registration, The 2011 Regulation of the Head of the National Land Board No. 3 on the Management, Assessment and the Settlement of Land Conflict.

¹¹ The absence of a guarantee of certainty must also mean the absence of legal protection, because the use of a registration system adopted gives up legal responsibility for the products of the National Land Board/the Head Office of Land Board, see also: Widhi Handoko, *Kebijakan Hukum Perumahan Sebuah Refleksi Keadilan Hukum Progresif*, Yogyakarta: Thafa Media, 2014, p77.

¹² Source: The certificate cancellation is based on the Decision of the Administrative Court of Palembang and the Palembang District Court, Year 2011-2016.

¹³ See: The General elucidation of the 1997 GR No. 24 concerning Land Registration explains that in the Government Regulation which complete the 1961 GR No.10, the objectives and the systems used are retained, which in essence have been stipulated in the Agrarian Basic Law (UUPA), namely that land registration is held in the framework of providing legal certainty in the field of land and that the publication system is a negative system, but containing a positive element, because it will produce letters of evidence that the right applies as a strong evidentiary tool, as stated in Art. 19 Para. (2) letter c, Art. 23 Para. (2), Art. 32 Para. (2) and Art. 38 Para. (2) of the Agrarian Law. Land registration also continues to be carried out in two ways, namely systematically covering an area of one village or sub-village (kelurahan) or in part which is mainly carried out on the initiative of the Government and sporadically, namely registration of a parcel of land at the request of the holder or recipient of the relevant rights individual or mass.

the Government Regulation No. 10/1961 on Land Registry.¹⁴ As otherwise proved for by the Government Regulation No. 10 of 1961, there are two things that implicitly need to discuss here. Firstly, it refers to the objective of land registration and secondly to the system used in land registration which is not, in practice, explicitly revoked and declared invalid by the Government Regulation No. 10/1961 on Land Registry. Herein, the government simply reduces or reconstructs and explains that the objectives and systems used in land registration are stretchy or elastic. This loophole creates many disputes in the field of land.

In fact, the objectives of the negative system of land registration actually are to provide for legal certainty and legal protection for the land certificate owner. In other words, the negative system in the Government Regulation No. 24 of 1997 is a positive element in awarding legal protection for those who have land right certificates. Nevertheless, the negative system used in the provision above is hard to understand since under this system there is also a positive element. The further impact of this ambiguity is on the security of the land certificate owner which can also be claimed by the other party. Therefore, there are three elements which need to take into consideration in the law containing norm formulation. Those elements are clarity, firmness and meticulous. Without these three elements, the legal enforcement of law will not be implemented and run well. Then the human rights associate-problems will be an issue since the land certificate holder has no legal certainty and legal protection concerning his or her land ownership. This also will intersect with the

Article 28D of the 1945 Constitution of the Republic of Indonesia which states that: Everyone is entitled to the recognition, guarantee, protection and legal certainty of justice and equal treatment before the law.

It is important that the legal certainty, as it is manifested in the Government Regulation No. 24 of 1997, is the final objective of land registration and is solely the purpose of law as well. This is the characteristic of a country like Indonesia where civil law is a system which emphasizes on the element of legal certainty of every law produced. Notwithstanding, this kind of elements has little consideration of the enforcement of law based on the value of justice. As a result, the Government Regulation No. 24 of 1997 above does not function a lot in solving the conflict of agrarian matters. Simply, there will be a description concerning the implications of the purpose of land registration used in the Government Regulation 24 of 1997.

1. The implication of the objectives of land registry

Literally, the word implication in an Indonesian dictionary is defined as a state of involvement, interference and when connected to the purposes of land registration conducted by an individual are for legal certainty and legal protection for one's land rights certificates. In this case, the person in-charge for land registration is the functionary of the National Land Board (NLB/BPN). Thus, in land sector, the NLB is the government representative in charge in the policy implementation responsible for the issuance of land certificate as required in Article 3 (a) of the Government Regulation No. 24 of 1997 concerning Land Registration.¹⁵

¹⁴ State Gazette of 1961 No. 28; State Gazette Additional No. 2171 of 1961.

¹⁵ Art. 32 Para (2) of the 1997 GR No. 24 mentions that the purpose of land registration is: to pro-

This provision implicitly contains a negative system of positive elements. This system provides for assurance of legal certainty and legal protection against the holder of land rights. In order to make the Article 3 above function properly, it should be connected to Article 32 Paragraph (2) of the Government Regulation No. 24 of 1997 stating that should land certificate be issued for a person or legal entity in good faith and in actual control, the other party who has the same right over the same land can no longer claim if within 5 (five) years since the issuance of the certificate, he or she does not submit a written objection to the holder of the certificate and the Head of the Land Office concerned nor to file a lawsuit to the Court regarding the control of the land or the issuance of the certificate. The implication of the provisions above is not as simple as it is in its application even though when the provision raises legal conflicts, especially against third parties that are not legally protected.¹⁶ It is noted that the norm formulation in Article 32 Paragraph (2) of Government Regulation 24 of 1997. This provision implies that the holder of land certificate has to meet some criteria. Firstly, the holder of land rights certificate must be in good faith. Secondly, the holders of the certificate actually control—the object of the land. Thirdly, the absence of a complaint is filed., In other

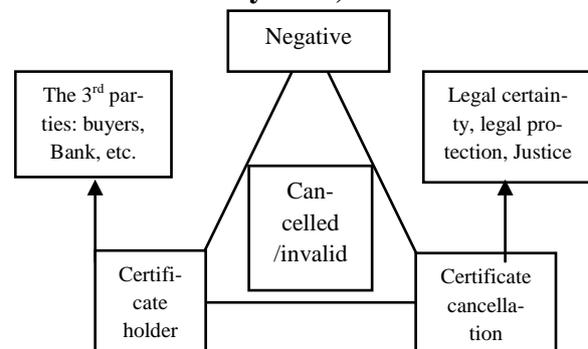
vide legal certainty and legal protection to the right holder of a plot of land he or she owns.

¹⁶ What is meant with the legal conflicts arising from third parties, herein, is the one who have their name stated in the land right certificate. He or she was as the previous land buyers who have sold their land. Under this case, they are not guaranteed by the provisions of Article 3 of the 1997 Government Regulation no. 24, as well as if the certificate is used as a loan guarantee in the bank. The decision made by the Court will not have legal effect to the previous owner if the land certificate is declared invalid by Court decision.

words, the legal certainty of the land rights certificate is attached to the three requirements of good faith, the object is controlled and the absence of objections from other parties. If all these three conditions match the certificate holder, then he or she has a legal guaranty, a legal certainty, and a legal protection over the land he or she has, *vice versa*, if one of the conditions above does not exist, then the legal certainty assurance is shifted into legal uncertainty.

In my opinion, the provision above, if judged from the aspect of the norm stipulated in Articles 3 and 32, then the land registration system may be tacitly called limited negative registration system. Legal uncertainty in the issuance of land certificates has not been yet indicating the assurance of certainty illustrated in the chart below:

Source: secondary data, 2016



Based on the above chart, one can see that the negative system as adopted by the Government Regulation No. 24 of 1997 has not yet provided the legal certainty and legal protection both to the land certificate holder and to the third party. This is because the other party can examine the legal land documents as the data were deposited at the NLB. If it is proven, one may claim the cancellation to the Court over the land certificate which has been owned by the right certificate holder.

It is noted that the legal certainty stipulated in Article 3 has some consequences if the verdict of the Court has declared cancellation over the status of land certificated ownership, *mutatis mutandis* for the third parties as well. Thus, legal protection the Article 3 guarantees has not yet been manifested. On the contrary, the legal certainty and legal protection will create other legal interest to those who are able to prove that the physical data and juridical data are legally accountable, and as a legal consequence to the land certificate holders that administratively physical data and juridical data are legally proven incorrect or defective. Therefore, the Court decision declares cancellation or invalid to the certificate, so as to bring about justice for parties capable of proving otherwise. In other words, those capable of proving that the juridical land data have been tested through legal proceedings in the courts by *mutatis mutandis* embody legal protection as well. Thus, under this condition, the certificate holder that has a legal certainty but s/he does not get legal protection from the law. Whilst those who are able to prove that the land legally belongs to him, s/he will get legal certainty and the law protection, while the third parties who receive the transfer of rights or land certificates do not have legal certainty and legal protection. Consequently, they will not get the realization of justice and in the next turn there is a conflict between the holders of the certificate with a third party.

2. Negative Publication System (a positive element) is contrary to the fair value of legal certainty pursuant to the 1945 Constitution of the Republic of Indonesia

As described previously that the provisions of the Government Regulation No. 24 of 1977 put the government (the National Land

Board/BPN) into the passive position since the function of the government only accepts documents the applicants submit. As a result, whenever there is a land conflict, there are only two mechanisms one may remedy; the District Court and the Administrative Court. The two legal remedies above resulted in the land conflicts which never ended. It is obvious that the passive attitude of the NLB is not in line with the 1945 Constitution manifested in the sentence "protecting the Indonesians as a whole...and so on." This condition becomes more crucial when confronted to the Article 28D of the 1945 Constitution which emphasizes that all the Indonesians have legal protection and legal certainty concerning the land certificate they have. The legal certainty and legal protection are legal binding (in the Dutch term it is called *inkracht*) as elements manifested in the Courts verdicts.

Criticism over the purpose of land registration stated in the Articles 3 and 32 of the Government Regulation No. 24 of 1977 are exactly in contrary to the 1945 Constitution of the Republic of Indonesia. This is because the term "legal certainty" defined in the Article 3 of the Government Regulation No. 24 of 1977 does not derive from and origin of the values that grow and live in the Indonesian society. A just and legal certainty guarantee contained in the 1945 Constitution philosophically requires every policy in the field of land provide guarantee for fair and legal certainty, so that every policy made to issue land titles can provide any legal protection guarantee for the community, individuals, and legal entities as well.

3. The legal certainty and the legal protection defined in the Government Regulation No. 24 of 1997 are dissimilar to the concept of a Just Legal Certainty pursu-

ant to the 1945 Constitution of the Republic of Indonesia

Dictating the Preamble of the 1945 Indonesian Constitution, particularly to the paragraph four which firmly declares that: "... Other than that to establish a Government of Indonesia that protects the entire Indonesian nation and all of Indonesia's country and to promote public welfare, educate the nation's life, and participate in carrying out the world order based on freedom, eternal peace and social justice ... ". By considering the content of the phrase above and in its relationship to the publication system of the element positive as required by the Government Regulation No. 24 of 1997 it is assumed that there is a disharmony between the idea manifested in the Preamble of the 1945 Indonesian Constitution and the idea implemented in the Government Regulation No. 24 of 1997 viewed from the aspect of proof used in the Court. Besides, there is disharmony between the objective of land registration and the obligation of the State or the Government to provide protection to the holder of land certificate that the Government Regulation No. 24 of 1997 concerning the Land Registration is precisely paradox to the Government's obligation to protect its people in the field of land matter. The disharmony causes the lack of legal protection guarantee for everyone who has land certificate. This is because the negative-positive element in the Government Regulation No. 24 of 1997 does not able to provide guarantee legal certainty of land certificate holder whenever there is another party who has the same land certificate based on the evidence, this party is able to prove as otherwise it is regulated in Article 32 Para (2) of the Government Regulation No. 24 of 1997.

A land registration administered by the Agrarian Regulation does not employ the positive publication system where the valid data of the documents are guaranteed by the State but using the negative publication. The negative publication has made the Government (NLB) in the position of no able to provide a legal guarantee over the land documents presented by the right holder. This is due to the position of the NLB is not in the state of passive or waiting. This implies that the applicant should have been in active position to gather the data relating to what he or she applies for. If one confronts it to the Article 19 Paragraph (2) Letter c of the Agrarian Regulation, the negative publication system above is not thoroughly applied.¹⁷This is because the issued letter of proof of rights is the strong evidence as declared in the Articles 23¹⁸ and 32,¹⁹ and Arti-

¹⁷ For detail see: the 1960 Law No. 5 concerning Basic Agrarian Regulations which formulates: (1) To ensure legal certainty by the Government, land registration throughout the territory of the Republic of Indonesia is carried out according to provisions regulated by the Government Regulations. (2) The registration in paragraph 1 of this article includes: a. measurement, mapping and land book; b. registration of land rights and the transfer of these rights; c. the granting of proof of rights documents, which applies as a strong evidence tool. (3) Land registration is carried out in view of the state and society, the need for socio-economic traffic and the possibility of its implementation, according to the Minister of Agrarian considerations. (4) In the Government Regulations, the costs concerned with registration are stipulated in paragraph 1 above, provided that for the people who are not able to pay the cost will be exempt from payment of these costs.

¹⁸ See Art. 23 of the 1997 GR. No. 24 of 1997 concerning Land Registration for the purposes of registration of rights: a. the right to new land is proven by: 1) the decision of granting of rights from the authorized official to grant the rights in question according to the applicable provisions if the granting of said rights originates from State land or management rights land; 2) the original of the Officer of Land Deed (*PPAT*) which contains the

cle 38²⁰ of the Agrarian Regulation. The registration of various legal events constitutes an evidence tool. A part of the regulation deals with the procedure of collecting, analysing, recording, and exposing of the physical and juridical data. The issuance of the certificate regulated in this Government Regulation reflects the Government's effort to provide the guarantee of legal certainty. In the nexus of the above matter, the provision as declared in paragraph (2) is in held.

This provision aims at one hand to stick to a negative publicity system and on the other hand to provide legal certainty to those who in good faith control a piece of land and

granting of the right by the holder of the right to the recipient of the right in question if regarding the right to use the building and the right to use the land of ownership; b. management rights are proven by the decision of granting management rights by the authorized official; c. the Land Donation (*Waqf* land) is proven by pledge of the Land Donation (*Waqf* land) deed; d. ownership rights to the apartment units are proven by a split deed (*Akta Pemisahan*); e. granting mortgage rights is proven by the deed of granting rights.

¹⁹ See Art. 32 Para. (1) the 1997 GR No. 24 concerning Land Registration, Certificate is a proof of right that applies as a strong evidentiary tool regarding the physical data and the juridical data contained in it, as long as the physical data and juridical data are in accordance with the data contained in the measuring letters (*surat ukur*) and rights land books concerned. Furthermore, in the explanation, it is explained that the Certificate is a strong proof, in the sense that as long as it cannot be proven otherwise the physical data and juridical data contained therein must be accepted as correct data. Of course the physical data and juridical data listed in the certificate must be in accordance with the data contained in the land book and the measurement letter concerned, because the data was taken from the land book and the measurement letter.

²⁰ See Art. 38 Para. (1) GR No. 24 concerning Land Registration formulates that the Producing of deeds as referred to in Art. 37 Para. (1) is attended by the parties who carry out legal actions concerned and witnessed by at least 2 (two) witnesses who are qualified to act as witnesses.

are registered as rights holders in the land book, with certificates as proof, according to the Agrarian Regulation applies as a strong evidence tool.

Furthermore, the weakness of the negative publication system is that the party whose name is stated in the land certificate is as the rights holder in the land book and land certificate. In other words, the land certificate holder will always face the possibility of being sued from another party whose name is in the same land certificate. In general, a person can find the way out to handle the above problem by using the institute of *acquistieve verjaring* or adverse possession.

The current land law that uses the basis of customary law cannot use that institution, because the customary law does not acknowledge it. Nevertheless, in customary law there are institutions that can be used to fill the gap of the negative publication system in land registration. In the Dutch term it is called *rechtsverwerking* institution. In customary law, if a person for a period of time abandons the land without being cultivated and someone else cultivates it in good faith, then the right of the former to claim the land is lost. This statement is in line with the provisions of the Agrarian Regulation of Articles 27, 34 and 40. These provisions are also parallel to the customary law²¹ where the land for a period of time remains combined; then the right of the former to the land is lost as well. Thus, the provisions

²¹ Interviewed with Mr R, the previous Deputy of National Land Board of Republic of Indonesia, Jakarta, and 7 Jan 2017. To him, the *adat* right (for example the *Tanah Girik*) that is registered, the status of land cannot be waived out although the holder the *Girik* Land abandons the land for years. Meaning, there is no expiration for the *adat* land, the Government, however, will face difficulty when collecting tax over the *adat* land.

manifested in Articles 27²², 34²³ and 40²⁴ of the Agrarian Law are in line with the customary law applied in the Indonesian traditional community. Thus, the assumption above refers to the meaning that what is specified in the paragraph above does not create new legal provisions, but rather the application of legal provisions that already exists in the customary law, in which the present legal system is part of the Indonesian National Land Law and at the same time it provides concrete manifestations in the application of provisions of the Agrarian law concerning the disused land. In the context of the obligation of the Government to protect all Indonesians and in correlation to the Government Regulation No. 24 of 1997, it is substantially in contradiction to what has been guaranteed in the Indonesian Constitution of 1945, especially the Article 28D affirming paragraph (1) Everyone has the right to the recognition, guarantee, protection and certainty of fair law and equal treatment before the law. In other words, the

²² See Law No. 5 of 1960 concerning the Basic Agrarian Regulations where the property rights are abolished if: a. the land fell to the state, 1. because of the revocation of rights under article 18; 2. because of voluntary submission by the owner; 3. because it is abandoned; 4. because of the provisions of Para. 21 (3) and 26 Para. (2). b. the land was destroyed.

²³ Note 22. Wherever the use of business rights is abolished due to: a. the expiration date; b. terminated before the expiration date due to a condition not fulfilled; released by the right holder before the expiration date; d. revoked for public interest; e. abandoned; f. the land is destroyed; g. provisions in article 30 paragraph (2).

²⁴ Note 22. Wherever the Building Right is abolished because of: A. The Term of Time Ended; B. Terminated before the term expires because something is not fulfilled; C. Released by the Right Holder before the Term Ended; D. Revoked for Public Interest; E. Abandoned; F. The land is destroyed; G. Provisions in Article 36 Paragraph (2).

norms contained in the Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia and the Article 3 of the Government Regulation No. 24 of 1997 in conjunction with the Article 19 of the Regulation No. 5 of 1960 show that there is a difference in its implementation between the phrase of a fair legal certainty stated in the 1945 Constitution and that in legal certainty which is protected by the Government Regulation No. 24 of 1997. In other words, the guarantee of legal certainty in the issuance of certificates in the negative system with a positive element is not the same as fair legal certainty according to the 1945 Constitution of the Republic of Indonesia.

CONCLUSION

Based on what has been discussed previously, the following are the conclusions:

1. In its implementation, the concept of guaranteed legal certainty and legal protection of the holders of land rights which are the main objectives of land registration according to the Government Regulation No. 24 1997 is hard to spell. The lack of legal certainty and legal protection for holders of land rights in land registration is due to:
 - 1.1 System for publication of land registration used by the Government Regulation No. 24 of 1997 is a negative publication with a positive element in which the truth of the data is not guaranteed by the State. Consequently, the land certificates as a product of land registration can be disputed by other parties and even they can be cancelled or declared invalid by the Court decisions.
 - 1.2 There are conflicting legal norms in the Government Regulation No. 24 of 1997 such as the imperative norms contained in the Articles 3 and 4. Meanwhile the Article 32

Paragraph (2) of the Government Regulation No. 24 of 1997 is considered as the open norm (*openbaar norm*) which provides an opportunity for other parties to prove that the certified land belongs to him/her. This condition creates a dispute between the holders of land rights and other parties who claim to be the real land owners or the disputes with third parties;

2. Viewed from the aspect of the constitution, the value of legal certainty and legal protection would be realized through the implementation of land registration with a negative publicity system having a positive element. This is regulated by the Government Regulation No. 24 of 1997 that the legal certainty is derived from the understanding of positivity developed according to the civil law system. It is not considered as values that are extracted and sourced from the Indonesian nation. Therefore, the value of legal certainty and legal protection is in contrary to that of legal certainty and fair legal protection mandated by the 1945 Constitution of the Republic of Indonesia.

REFERENCES

Books

- Achmad, Rusyaidi. 2009. *Pengadaan Tanah Untuk kepentingan Umum: Antara Kepentingan Umum dan Perlindungan Hak Asasi Manusia*. Jakarta: Kencana.
- Ali, Achmad. 2002. *Menguak Tabir Hukum (Suatu Kajian Filosofis dan Sosiologis)*. Jakarta: PT. Gunung Agung.
- Dalimunthe, Chodidjah. 2000. *Pelaksanaan Land Reform di Indonesia Dan Permasalahannya*, FH USU Press, Medan.
- Dani, Umar. 2015. *Putusan Pengadilan Non Excecutable*. Yogyakarta: Genta Publishing.

Dunn, William. 1999. *Pengantar Analisa Kebijakan Publik (Edisi II)*. Yogyakarta: Gadjah Mada University Press.

Handoko, Widhi. 2014. *Kebijakan Hukum Pertanahan Sebuah Refleksi Keadilan Hukum Progresif*. Yogyakarta: Thafa Media.

Hetmeyer, dan James Petras. 2013. *Imperialisme Abad 21*. Yogyakarta: Kreasi Wacana.

Hutagalung, Arie S. 2005. *Tebaran Pemikiran Seputar Masalah Hukum Tanah*. Jakarta: Penerbit Lembaga Pemberdayaan Hukum Indonesia.

Muchsin, dkk. 2007. *Hukum Agraria Dalam Perspektif Sejarah*. Bandung: Refika Aditama.

Reality, Tim. 2008. *Kamus Baru Bahasa Indonesia*. Surabaya: Reality Publisher.

Santoso, Urip. 2009. *Hukum Agraria, Kajian Komprehensif*. Surabaya: Kencana.

Sugiono, Muhadi. 1999. *Kritik Antonio Gramsci Terhadap Pembangunan Dunia Ketiga*. Yogyakarta: Pustaka Pelajar.

Journal

Prasetyo Eko. 2004. "Kapitalisme dan Liberalisme Suatu Tinjauan Singkat Ekonomi Politik." *Jurnal Almanar*. (1).

Laws

The 1945 Indonesian Constitution.

The 1960 Law No. 05 on Basic Agrarian.

The 1997 Government Regulation No. 24 on Land Registration.

The 1997 Ministry of Agrarian/Head of National Land Board No. 03 on the Implementing Regulations of the Government Regulation of 1997 No. 24 on the Land Registration.

The 2011 Ministry of Agrarian/Head of National Land Board No. 03 on the Management of, Study and Land Conflict Resolution.