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### Realizing the Existence of Positive Publication System Land Registration in Indonesia

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#### Abstract

Indonesia adheres to a land registration system with a rights registration system with a negative publication system with positive elements as referred to in the Elucidation of PP No. 24 of 1997 concerning Land Registration, this is a follow-up based on Article 19 paragraph 2 letter c of Law no. 5 of 1960, namely the issuance of letters of evidence of rights that are valid as a strong means of proof, that is, if there is evidence of rights or certificates of land rights, then there is still a threat of cancellation if it turns out that there is new evidence based on a court decision that has permanent legal force. In this regard, the issue that has continued to this day is the urgency for Indonesia to change the registration of negative publication system rights with positive elements that are currently in effect. become a (pure) positive publication system so that proof of rights or certificates are not threatened with cancellation, especially in connection with the problems of land cases recently including land mafia games. the author conducted research using normative legal methods with a qualitative analysis perspective through a philosophical approach, namely ontological, epistemological and axiological (legal philosophy). So that the research objective can be achieved, namely the urgency or not for Indonesia to change from a land registration system with a rights registration system with a negative publication system with positive elements to a land registration system with a positive (pure) publication system, a certificate as a means of proof which absolutely cannot be canceled. especially related to the problem of land cases lately including land mafia games. the author conducted research using normative legal methods with a qualitative analysis perspective through a philosophical approach, namely ontological, epistemological and axiological (legal philosophy). So that the research objective

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**Keywords:** Opportunity, Land Registry, Positive Publication System, Indonesia

#### 1. Introduction

Based on the philosophy of Article 33 Paragraph (3) of the 1945 Constitution, the land, water and natural resources contained therein are in the control of the state and used as much as possible for the prosperity of the people, Law Number 5 of 1960 (UU 5/1960) concerning Basic Regulations was promulgated. Agrarian Principles; then in the FIFTH Dictum it can also be called

the Basic Agrarian Law (UUPA), hereinafter referred to as UUPA 5/1960. With regard to the determination of rights and registration of land, the implementation of the State's Controlling Rights in Article 2 of Law 5/1960 UUPA in particular Paragraph (2) point (b), and (c) was followed up with Article 19 UU 5/1960 UUPA:

1. To ensure legal certainty by the Government, land registration is carried out throughout the territory of the Republic of Indonesia according to the provisions stipulated by Government Regulations.
2. The registration referred to in paragraph (1) of this article includes:
  - a) land mapping and bookkeeping measurements;
  - b) registration of land rights and the transfer of said rights;
  - c) Provision of letters of evidence of rights, which are valid as a strong means of proof.
3. Land registration is carried out taking into account the condition of the State and society, the need for socio-economic traffic and the possibility of implementing it, according to the considerations of the Minister of Agrarian Affairs.
4. In a government regulation, the fees related to the registration referred to in paragraph (1) above are regulated, provided that people who cannot afford to pay are exempted from paying these fees.

Based on Article 19 paragraph 2 letter b Law 5/1960 UUPA it is stipulated that the land registration system adopted is a rights registration system. According to Boedi Harsono (2008), the similarity with the deed registration system adopted by the Dutch, who once colonized Indonesia, is that the two registration systems both use deed registered at the land office, but in the deed registration system only the deed is registered, whereas the rights registration system is adhered to by Law 5/1960 that what is registered is the contents of the name of the holder receiving the rights in the deed; because there are already available checklists for recording, namely among other things the main checklist is the land book checklist.

The purpose of registration in Article 19 paragraph 1 of Law 5/1960 above was followed up by Article 4 of Government Regulation Number 24 of 1960 concerning Land Registration, hereinafter referred to as PP 24/1997 which revoked, replaced and perfected PP 10/1961, with the following aims:

1. To provide legal certainty and protection to rights holders over a plot of land, apartment units and other registered rights so that they can easily prove themselves as the holder of the rights in question;
2. To provide information to interested parties, including the Government, so that they can easily obtain the data needed to carry out legal actions regarding registered land parcels and apartment units;
3. For the implementation of orderly land administration. Realized the purpose of land registration as a solution to avoid, overcome cases of land conflicts, including the land mafia which has recently been rife.

The elucidation of PP 24/1997 explains that like PP 10/1961, it still maintains the ontological goals and system used, in essence it has been stipulated in Article 19 of Law 5/1960 UUPA, namely land registration is managed to provide guarantees of legal certainty in the land sector, a negative publication

system contains a positive element because it will issue documents of proof of rights whose existence applies as a strong means of proof, as referred to in Article 19 paragraph 2 letter c, Article 23 paragraph 2, Article 32 paragraph 2 and Article 38 paragraph 2 Law 5/1960 UUPA. Then the elucidation of Article 32 paragraph 1 PP 24/1997 explains further that a certificate of land rights is a strong proof of rights,

Management of land registration Law 5/1960 UUPA does not use a positive publication system in which the accuracy of the data presented is guaranteed by the State, but uses a negative publication system where the State does not guarantee the accuracy of the data presented. But that does not mean using a purely negative publication system. This can be seen from the arrangements in Articles 23, 32 and 38 of the UUPA, the registration of various legal actions/events as a means of collecting, processing, storing and presenting physical data and juridical data as well as the issuance of certificates, it is clear that efforts are made to obtain and present them as far as possible. correct data, because land registration is to ensure legal certainty.

Furthermore, in Article 32 paragraph 2 PP 24/1997 this regulation aims, on the one hand, to remain guided by a negative publication system, but on the other hand, it also guarantees juridical certainty for parties with good intentions who physically control a piece of land and then register it as the right holder. in the land book, with the certificate as proof as referred to in Article 19 paragraph 2 letter c Law 5/1960 UUPA stipulates that it applies as a strong means of proof. According to Boedi Harsono (2008) it is not an absolute means of proof.<sup>1</sup> The negative publication system has the disadvantage that the party whose name is recorded as the holder of rights in the land book and certificate still faces threats, the possibility of a lawsuit from other parties who feel they own the land.

Weaknesses in the scope of our land law which are based on the basis of customary law not recognizing it, result in not being able to use that institution, but our customary law has a *rechtsverwerking* institution which can be used as a solution to overcoming the weaknesses of the negative publication system in land registration. The scope of customary law, if a person for a period of time allows his land not to be worked on, then the land is worked on by someone else who gets it in good faith, resulting in the loss of his right to claim the land back. The provisions in Law 5/1960 UUPA which determine the abolition of land rights due to neglect (Articles 27, 34 and 40 of the UUPA) are in accordance with this institution. The content of the meaning of this understanding is that what is stipulated in Article 32 paragraph 2 PP 24/1997 does not create new legal provisions, but as an implementation of existing legal regulatory provisions within the scope of customary law.

The main requirement in a positive publication system is that the State guarantees the correctness of the data presented as the basis for a certificate of rights over land rights (Boedi Harsono, 2008), while Law 5/1960, although it uses land registration with a registration system, does not use a positive publication system but uses a negative publication system based on positive; the question is why?

<sup>1</sup> Boedi Harsono, *Hukum Agraria Indonesia Sejarah Pembentukan Undang-undang Pokok Agraria, Isi Dan Pelaksanaannya*: Jilid 1 Hukum Tanah Nasional. 2008

This must be answered in order to change the registration of a negative publication system with positive elements as a solution to a positive publication system.

## 2. Research methods

The word method comes from the Greek, namely *methodos* and in Latin it is also called *methodus*, namely the process or procedure to achieve the goal.<sup>2</sup> According to Soerjono Soekanto, legal research is a series of scientific activities, guided by a method, systematic (based on a system) and certain thoughts which have the aim of studying one or several certain legal phenomena by means of analysis. Another thing that is important to pay attention to is the act of examining the legal facts in depth, then determining a solution to the main issue or problem that exists in the related phenomenon. This study uses normative legal research methods with a problem approach that can be related to:

1. Statutory approach (*statuta approach*);
2. Historical approach (*historical approach*);
3. Conceptual approach;
4. Comparative approach.<sup>3</sup>

According to Soerjono Soekanto,<sup>4</sup> research usually consists of two types of data, namely:

1. Primary data, data taken directly from the community.
2. Secondary data, data taken from library materials; normative legal research carried out through the method of researching library materials or secondary data.

Then the method of analyzing legal material, according to Philip M. Hardjon, is carried out by covering legal concepts, technical legal norms, legal figures, and legal sources.<sup>5</sup> This legal analysis is also equipped with a tendency approach to legal philosophy.

Philosophy or philosophy according to the Big Indonesian Dictionary (KBBI) is knowledge and investigation based on reason about the scope of the nature of all that exists, its causes, origins and laws. According to Domikus Rato,<sup>6</sup> legal philosophy contains two words in the form of philosophy and law; philosophy comes from Greek: *Philosophia*; the word *philo* (*philein*) means love and *Sophia* means wisdom, so the word *philosophia* means love of wisdom or love of wisdom. If a person loves wisdom, it means that all his thoughts, words and actions will always be oriented towards wisdom, that is, departing from wisdom towards truth and justice. Law is not a goal but only a tool

<sup>2</sup> A'an Efendi, Dyah Ochtorina Susanti, Rahmadi Indra Tektona, *Penelitian Hukum Doktrinal*, (Yogyakarta, LaksBang Justitia, Nov.2019, h.20., diakses dari [www.merriam-webster.com](http://www.merriam-webster.com), diakses 15-11-2018).

<sup>3</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, Edisi Revisi, (Jakarta: Prenadamedia Group, Cetakan ke-12, April 2016), h. 133.

<sup>4</sup> Soerjono Soekanto, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, (Depok, PT Radja Grafindo Persada, Divisi Buku Perguruan Tinggi, Cetakan ke-21, Februari 2022), h. 12.

<sup>5</sup> Philipus M. Hardjon, *Pengkajian Ilmu Hukum Dogmatik (Normatif)*, Makalah, (Surabaya: Fakultas Hukum Unair, 1994), h. 3-4.

<sup>6</sup> Dominikus Rato, *Filsafat Hukum, Suatu Pengantar Mencari, Menemukan dan Memahami Hukum*, Cetakan IV, (Surabaya: LaksBang Justitia, 2014).

or instrument to obtain justice, the purpose of law is formed to achieve justice which in the end is to achieve prosperity. The tendency approach of legal philosophy completes two aspects, namely:

1. Classification of ontological, epistemological and axiological stages;
2. The three characteristics of philosophical thinkers are fundamental, comprehensive and speculative.

## 3. Results and Discussion

Based on the approach to the problem and analysis mentioned above with an approach with legal philosophy tendencies, activities are carried out in the results and discussion stages.

### 3.1 Definition and Substance of Land Registration

The definition of registration based on positive law in Indonesia is regulated in 2 government regulations, namely:

#### 1. Chapter I General Provisions Article Number 1 PP 24/1997 Land Registration:

Land registration is a series of activities carried out by the Government continuously, continuously and regularly, including the collection, processing, bookkeeping, and presentation and maintenance of physical data and juridical data, in the form of maps and lists, regarding land parcels and units flats, including the issuance of certificates of proof of title for land parcels that already have rights and ownership rights to flats units as well as certain rights that burden them.

#### 2. Chapter I General Provisions Article Number 9 8/PP 18/2018 Management Rights, Land Rights, Flats Units and Land Registration:

Land registration is a series of activities carried out by the Government continuously, continuously and regularly, covering the collection, processing, bookkeeping, and presentation and maintenance of physical data and juridical data, in the form of maps and lists, regarding land parcels, land space, Basements and flats, including the issuance of proof of title for plots of Land, Upper Grounds, Basements that already have rights and ownership rights to Flats Units and certain rights that burden them.

The substance of the change or expansion of the definition stipulated in PP 18/2021 is the arrangement of space above ground and basement as a follow-up to Article 1 paragraph 6 outside the territorial boundaries of the provisions of Article 4 paragraph 2 UU 5/11960 UUPA relating to land. According to Koes Widarbo,<sup>7</sup> The meaning of land registration is the activity of registering land parcels and their above-ground and underground space in the product:

1. registration for the first time (*originair*), in the form of a land book, measurement letter, title certificate, map of land parcels and above and below ground space; And
2. maintenance of data (*derivatives*).

<sup>7</sup> Koes Widarbo, *Belajar Bersama, Pendaftaran Tanah I 2021*, youtube, <https://youtu.be/uUnXXxp9YAc>.

### 3.2 Land Registration System and Its Publication in Various Countries

According to Hanstad,<sup>8</sup> Most of the above experts agree that in part the classification of the land registration system is an important element of a thriving market economy. Land is the main, fundamental resource that is essential for the right target to be used and exchanged at the time the land rights are registered. Designing a land registration system requires a comprehensive study of why land registration is so special. It should also design a cadastral system related to the land registration system. According to Koes Widarbo<sup>9</sup> Adapting from Hanstad, designing a land registration system, the most difficult problem is the era of the moment in the development process when developing countries have to focus resources in the field of administration and their limited state budget to design an official land registration system.

According to McLaughlin and Nichols,<sup>10</sup> difference between the definition of land registration and cadastral. Land registration is a process of recording legally formalized interests (corridor of ownership and/or use) of land. The cadastral is an official record of information about land parcel objects, containing details relating to boundaries, ownership, use, and nominal value.

### 3.3 Land Registration System

Classification of the land registration system, the difference is generally held at the beginning of the first time is the registration of deed and registration of rights. Legally based on the cons, "the registration of the deed is closely related to the registration of the legal fact itself"; while the registration of rights relates to the juridical consequences of that fact."<sup>11</sup> In the same publication, Henssen explained that both systems with methods very close to the definition confirmed at the 1972 Meeting of the Ad Hoc Group of Experts on Surveys and Cadastral Mapping.<sup>12</sup> While Enemark argues,

<sup>8</sup> Hanstad, Tim. "Designing Land Registration Systems for Developing Countries." (USA: American University International Law Review 13, No.3,1998), p. 652

<sup>9</sup> Koes Widarbo, *Manfaat Pendaftaran Tanah Sistematis Lengkap Dalam Rangka Mewujudkan Pendaftaran Tanah Sistematis Publikasi Positif Di Indonesia, Proposal Penelitian Disertasi*, Universitas Jember, Fakultas Hukum, 2022, h.68.

<sup>10</sup> McLaughlin, J.D. and Nichols, S.E., *Resource Management: The Land Administration and Cadastral Systems Component*, In: *Surveying and Mapping*, (: No. 2, 1989), p. 81-82

<sup>11</sup> Henssen, Jo (1995). *Basic principles of the main cadastral systems in the world*, In: *Modern Cadastres and Cadastral Innovations*, (Delft: FIG Commission 7 and University of Melbourne, Proceedings of the One Day Seminar in Delft on May 16, 1995), p. 8

<sup>12</sup> United Nations (UN), *Report of the Ad Hoc Group of Experts on Cadastral Surveying and Mapping* (UN: from 9 to 20 October 1972), p. 25 McLaughlin, J.D. and Nichols, S.E. (1989). *Resource Management: The Land Administration and Cadastral Systems Component*, In: *Surveying and Mapping*, No. 2, p. 81; Larsson, Gerard (1991). *Land Registration and Cadastral Systems: tools for land information and management*, (Harlow (Essex): Longman Scientific and Technical, 1991), p.17-18.

<sup>13</sup> In the world, various cadastral system organizations are clearly visible, especially with regard to land registration. Its substance can be divided into two classes of systems:

1. Deed Registration System.
  2. Rights Registration System (property rights);
- The dissimilarity of the two concepts is closely related to the extent to which the active participation of the state and with the shift from the culture and management of the state justice system. The main position of inequality lies; Is it only the transaction that is recorded (deed system) or is the transfer of ownership rights itself recorded and guaranteed (property rights system or what is known as a rights registration system). Deed systems maintain a register of owners focusing on "who owns what", whereas rights registration systems (ownership) register property by presenting "what is owned or owned by whom". Then the aspects of culture and justice are closely related to whether a country is based on Roman law (action system); or under Germanic or common-Anglo-Saxon law (a system of titles or registration of rights). This is because it is closely related to the history of colonialism.

Boedi Harsono, also emphasized that the land registration system consists of two groups:

1. Deed registration system ("registration of deeds"); And
2. The system of registration of rights ("registration of title", title, which means rights);

The territory of the land registration system consists of 3 components:

1. The documents that are registered;
2. Model of storage (archiving) and model of presentation of juridical data;
3. Model of proof of rights;

As for the common point of contact for the two systems of land registration, is the deed as the basis for proof, relating to any occurrence of granting or giving birth to new rights as well as the separation of rights and the encumbrance of them with other rights above them in the future. The deed contains the juridical data of the land consisting of:

1. Deed the law;
2. The right itself
3. Recipient of his rights; And
4. Rights what weighs on him.

So, the deed is a source of juridical data in both land registration systems.

#### 3.3.1 Deed Registration System

The registration of deeds originates from the heavily influenced Roman culture; and therefore, it is common in Latin culture in Europe (France, Spain, Italy, Benelux), in South America, and parts of Asia and Africa to be influenced by this culture. This concept of contract registration is also adopted in most of the United States. The deed system is found in various forms, with significant variations in the roles of cadastral identification and surveyors.<sup>14</sup>

<sup>13</sup> Stig Enemark, *The Land Management Paradigm For Institutional Development*, (Australia: University of Melbourne, Expert Group Meeting On Incorporating Sustainable Development Objectives Into Ict Enabled Land Administration Systems, Infrastructures and Land Administration, 9-11 November 2005), p. 5

<sup>14</sup> Stig Enemark, *ibid*, p. 6

The indicators of the deed registration system are as follows:<sup>15</sup>

1. The deed registered by the Land Registration Officer (PTT);
2. PTT is passive, does not test the validity of the data contained in the deed.

Boedi Harsono gave an example, based on the provisions of the *Burgelijk Wetboek (BW)* in the Netherlands; the transfer of rights is made by a notary in the deed of transport and the burden is in the borderel mortgage. The Dutch state adheres to the deed registration system, so the deed of transport from the border is registered by the PPT and after the proof of registration is recorded, it is then given to the buyer as the holder of the new land rights and the creditor as the mortgage holder, as proof of the rights to the land.

### Rights Registration System

Stick Enmark argues,<sup>16</sup> Registration of Rights consists of 3 models, consisting of:

1. The first model, comes from the strong influence of German culture and can be found in many central European countries (Germany, Austria, Switzerland).
2. The second model, a model or form that deviates from the original German system, is found in many Eastern European and Nordic countries. Various models relate to the use of the property concept and the organization of the cadastral process, including the use and participation of privately licensed surveyors; Still the second but specialist model of property systems exists in England, the concept of boundaries is commonly used to identify parcels of land on a series of large-scale topographic maps.
3. The third model, sourced from an original German concept (Raff 2003), was found in the Torrens system which was introduced in Australia in the mid-1800s to serve the need to secure land rights in the new continent.

Boedi Harsono<sup>17</sup> then explained the solution, overcoming the issue of the problem with the registration of the deed mentioned above, created by Robert Richard Torrens, a British citizen, a British land registration office official assigned to Australia, in the form of a new system that is much simpler to make it easier for people to get explanations easily, without having to go through the action of "title search" on existing deeds. Torrens had served as Registrar General of Deeds in Adelaide (South Australia) in 1853, his position as the highest registration officer created a system of "registration of titles" which became known as the Torrens system.

Boedi Harsono<sup>18</sup> further more emphasizes, the system of registration of rights even in every grant of new rights (originair) and legal actions that lead to maintenance of data (derivatives) must be proven by a deed. The implementation of the registration is not the deed that is registered, but the rights that are created and the changes thereafter that are registered. The deed is only a source of data, the changes

that occur later have been prepared by means of a checklist which in English is called a register.

According to which focuses more on output (medasar). This register is frequently found in the literature on Anglo-Saxon Legal Systems, and is linked to Ruoff. It requires that the registration of rights be successful or not is in accordance with the level of regional law and regional administration in accordance with three fundamental principles:

1. Mirror principle;
2. Curtain principle;
3. The principle of insurance.<sup>19</sup>

### 3.4 Land Registration Publication System

According to Henssen,<sup>20</sup> The principle of publicity means that these juridical registers are open to the public and that the facts and facts that are published can be confirmed at least by a third party who has good intentions, so that it is guaranteed by law. Next, the specialist principle considers that land registration and its consequences in the file submitted for registration, consist of: first, the subject (human), the two objects (i.e., real property) that are related must be identified with certainty. As with the application of other principles in the rights registration system, namely the principle (principle): special, ordering, approval. Even the textual format itself makes it clear that the principle of publicity can be interpreted very differently in different countries and times.

Then according to Hermanses,<sup>21</sup> answering questions of a general nature, the government of a country as the manager of the land registration of countries in the world, so that it can be implemented successfully, an announcement system (publication) is carried out that is closely related to the rights to the land; The scope of publication of land rights consists of two, namely:

1. The actual subject of the holder of land rights, the announcement is referred to as *publiciteit*, carried out by the registration of rights and deeds.
2. The object of the land parcel, related to the location, boundaries and area on land rights, the announcement is referred to as *specialiteit*, carried out by the cadastre.

This publication aims to provide a guarantee of legal certainty for the subject and object of land rights, so that the maintenance of land registration data, both transfer and encumbrance

optimal service is realized for land rights, whereas according to Jonas as quoted by Hermenes, in the Netherlands since the publicity and specialiteit of land rights, the imposition of mortgages on credit guarantees has increased significantly.

### Negative Publication System

The negative publication system is not based on the legality of the registration of actions or laws made to determine the transfer of land rights to the buyer. It is emphasized that the registration of the deed does not result in the party obtaining

<sup>19</sup> Henssen, Jo, *Basic principles of the main cadastral systems in the world, In: Modern Cadastres and Cadastral Innovations*, (Delft: FIG Commission 7 and University of Melbourne, Proceedings of the One Day Seminar in Delft on May 16, 1995),p.7.

<sup>20</sup> Ibid, p. 7

<sup>21</sup> Hermanses, *Pendaftaran Tanah di Indonesia*, Buku Perkuliahan Akademi Pertanahan 1986-1989 (Yogyakarta: STPN, perpustakaan, 1986), h.3-4.

<sup>15</sup> Boedi Harsono, *Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*, (Jakarta: Djambatan, Edisi 2008),h.76

<sup>16</sup> Stig Enemark, op.cit, 6

<sup>17</sup> Ibid, p. 77.

<sup>18</sup> Ibid

land from an unregistered party becoming the new rights holder. The system adopted is the principle of *nemo plus furis*, derived from the complete Roman Law, namely the principle: "*nemo plus juris in alium transferre potest quam ipse habet*" that people cannot transfer their rights beyond what they own.<sup>22</sup> Boedi Harsono explained,<sup>23</sup> the presentation of negative publication system registration data cannot be immediately trusted for its legitimacy. In this regard, the concept of indefeasible and indemnity is used as a form of compensation for giving compensation as a result of the mistake in issuing the certificate; As for the solution to overcoming the threat from the weakness of this negative publication system for countries that adhere to it using the "acquisitive verjaring" institution.

Boedi Harsono<sup>24</sup> explaining further, the PPT Office keeps archives of copies of its deeds which are open to the public. every time there is a change, it is mandatory in this negative publication system that the necessary juridical data must first be found in the relevant deeds. The threat of the risk of legal defects from a deed can result in the invalidity of the legal action as evidenced by the deed made later; To obtain the juridical data, a "title search" must be carried out which requires time and money, so that as a solution to this "title search", professional assistance is needed. Examples of countries that adopt a negative publication land registration system are France, Italy, the Netherlands, America, Indonesia. Kemen. PPM/Bappenas conducts research in Indonesia and the Netherlands.<sup>25</sup>

### Positive Publication System

Boedi Harsono<sup>26</sup> explaining, the positive publication system always uses a rights registration system, so there must be a land register or book for the means of keeping records and presenting juridical data and title certificates as proof of rights; this is the opposite of the negative publicity system. Recording a person's name in the register as a rights holder, results in that person becoming the holder of the rights over the land in question. Boedi Harsono further explained<sup>27</sup>, the legal act of transferring rights that was carried out was "Title by registration", "the register is everything"; this statement as the philosophy that underlies the Torrens system. This positive publication system results in the state guaranteeing the legitimacy of the presentation of its data. All stake holders can fully trust the information from the product of the process of presenting data in their register, the party who will buy the land or the creditor who will acquire the land as collateral for credit who will provide funds to the debtor; no need to worry about legal transactions with parties whose names are registered in the register as holders of land rights. According to the Ministry. PPM/Bappenas<sup>28</sup>

<sup>22</sup> Boedi Harsono, *Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*, (Jakarta: Djambatan, Edisi 2008, 2008) h. 81-82

<sup>23</sup> Boedi Harsono, *ibid*, h. 82.

<sup>24</sup> Boedi Harsono, *ibid*, 76

<sup>25</sup> Kemen. PPM/Bappenas, , *Kajian Persiapan Perubahan Sistem, Pendaftaran Tanah Publikasi Positif di Indonesia*, (Jakarta: Direktorat Tata Ruang dan Pertanahan, 2016), h. 16,

<sup>26</sup> Boedi Harsono, *op. cit*, h. 80

<sup>27</sup> Boedi Harsono, *op.cit*, h. 81.

<sup>28</sup> Kemen. PPM/Bappenas, *loc.cit*, h. 16

Examples of countries that are the object of research on positive publication land registration systems are England, Austria, Australia, Canada, Malaysia, Hong Kong and Tanzania.

### Comparison of Negative and Positive Publication Systems

Ministry of PPM/Bappenas,<sup>29</sup> summarizes the notes regarding the comparison of the publication system in the land registration system as follows:

#### 1) Negative Publication System Land Registration:

- a) adhered to by the registration of deeds system (registration of deeds);
- b) the power of proof of the certificate as proof is only strong, not absolute;
- c) the state does not guarantee that the physical data and juridical data contained in the certificate are correct; as long as it is not proven again by other evidence, but if the data listed on the certificate is not correct, then changes can still be made based on a court decision that has permanent legal force;
- d) against other parties who are harmed by the issuance of certificates for their land parcels, they can still submit an objection to the land registration administrator to cancel the certificate;
- e) Land registration officials are only passive because they do not have a position of power to support the accuracy and correctness of the data recorded in the certificate.

#### 2) Land Registration with Positive Publication System:

- a) generally adhered to by the registration of title system;
- b) the power of proof of the certificate as an absolute proof;
- c) The state guarantees that the physical data and juridical data recorded inside the certificate is correct, cannot be contested and gives absolute confidence in the existence of the land book;
- d) Third parties who acquire their land based on good faith obtain absolute (indefeasible) legal protection;
- e) Other parties who are harmed by the issuance of land certificates receive compensation in other forms.
- f) Owners of real land rights will lose their land rights.
- g) The authority of the judiciary is positioned only in administrative authority because the issuance of certificates cannot be contested<sup>30</sup>.

According to DeHaan,<sup>31</sup> It can be explained in the following register the most important characteristics of the negative system that is replaced by a positive system:

- There is weak guarantees completeness, validity and validity of records for the recipient of the transfer;
- The passivity of the registering institutions related to this matter;
- At least a complete register of the interest itself, with the accompanying guarantee;
- There is no provision of financial/insurance guarantees in the form of guarantees of accountability from the state for the entire register system.

Meanwhile, according to Palmer,<sup>32</sup> explains it in a similar way, that in a negative system, proof of title is only proven

<sup>29</sup> Kemen. PPM/Bappenas, *op.cit*, h.13-14

<sup>30</sup> Kemen. PPM/Bappenas, *ibid*, 17

<sup>31</sup> P. de Haan, *Asser-Mijnssen-De Haan Zakenrecht (I) [Property Law (I)]*, Willink (Dutch Zwolle: Tjeenk, 1992), p. 311

in the land register. Then in a positive system, property rights are based on the register, that is, registration functions to abort the previous owner and hand over land rights to the new owner. A positive system can be strengthened by government guarantees that the information registered is correct.

### Mapping Land Registry Systems Around the World

The characteristics of the land registration system initially were as follows:<sup>33</sup>

1. French System (French System)  
The land registration system in France adheres to a deed registration system with a negative publication system.
2. German System  
The land registration system in Germany adheres to a rights registration system with a positive publication system.
3. English System  
The English state that adheres to the Anglo Saxon legal system, the land registration system in England adheres to a rights registration system with a positive publication system.
4. Torrens System  
The Torrens land registration system is of Australian origin based on the original German System; adheres to a rights registration system with a positive publication system. Torren's System,<sup>34</sup> which is regulated in the Land Titles Act 1925. However, here it uses three basic principles originating from the Anglo Saxon system, namely the principle of mirrors, curtains and insurance

However, the four characteristics of the registration system are in progress developed in accordance with the circumstances and conditions of each country.

### Level of Assurance of Data Correctness by Country Deed Registration

Boedi Harsono further explained,<sup>35</sup> The Land Registration Officer (PPT) performs filing of copies of the deed and is open to the public; the obligation of this system is that every time there is a change, the necessary juridical data must be sought again in the relevant deeds. The first risk, the occurrence of weaknesses if there is a legal defect in a deed, it can result in invalidity of legal action as evidenced by the deed made afterwards; In order to obtain the juridical data, an action called "title search" must be carried out. The second risk is in the form of threats because this can take a long time and is expensive, because professional assistance is needed specifically in this field. Example in the Netherlands based on the provisions of the Burgerlijk Wetbook.

<sup>32</sup> Palmer, David W. *Incentive-base Maintenance of Land Registration Systems*, PhD Thesis University of Florida, (Florida: Gainesville, 1996), p. 65

<sup>33</sup> Stig Enemark, *The Land Management Paradigm For Institutional Development*, (Australia: University of Melbourne, Expert Group Meeting On Incorporating Sustainable Development Objectives Into Ict Enabled Land Administration Systems, Infrastructures and Land Administration, 9-11 November 2005), p.6.

<sup>34</sup> Kemen. PPM/Bappenas, op.cit, h.15

<sup>35</sup> Ibid, p. 76.

### Registration of Rights

Testing the correctness of the data is contained in the deed concerned, Boedi Harsono<sup>36</sup> emphasized that, unlike the PTT, in the system of registration of rights, it is active, in this system, the land book is kept in the PTT office and is open to the public. Certificates in other countries according to Boedi Harsono<sup>37</sup>, is only a copy of the register and only shows the juridical data at the time the certificate was made for the rights holder.

### Negative Publication System

The state does not guarantee the validity of the presentation of the data even though the deed has been registered, for the buyer there is still a risk of objection to a lawsuit from another party who can prove that he is the real right holder.<sup>38</sup>

### Positive Publication System

The state's positive publication system guarantees the validity of the presentation of the data.

The positive publication system always uses a rights registration system. Realization of certainty of the correctness of physical data and juridical data for each registered sector (both certificates issued and new stages of bookkeeping or maps of land parcels), as a preventive and persuasive solution to land cases, both disputes and conflicts as well as cases in the judiciary. This includes the land mafia as discussed in a coordination meeting regarding land conflicts by the Coordinating Minister for Law and Security (Menko.Polhukam)<sup>39</sup>.

### State Efforts to Guarantee Data Correctness

The land registration system in Indonesia adheres to a rights registration system but has a negative publication system with positive elements, not or not yet purely positive. However, based on the above analysis, it should be a publication system in Indonesia is positive. Why was Law 5/1960 UUPA not adhered to? This was because the state had not been able to guarantee the accuracy of the data it presented. As for one of the main requirements is that state activities in Article 19 paragraph 2 letter a, namely measurement, mapping and bookkeeping of land, are still very minimally implemented. One of the main indicators as a follow-up, namely project activities/program Complete Dea PP10/1960 Land Registration sourced from the State Revenue and Expenditure Budget (APBN) is still very minimal due to limited funds, human resources who master the techniques of measuring and cadastral mapping and technology of that era still minimal.

### Complete Village based on PP 10/1960

According to Koes Widarbo, acceleration of land registration PP 10/1961 is the first land registration activity, but the product is not yet a certificate of land rights but is a registration map containing plot by plot of land and the

<sup>36</sup> Ibid, p.78.

<sup>37</sup> Ibid., h. 78

<sup>38</sup> Boedi Harsono, *Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksananya*, (Jakarta: Djambatan, Edisi 2008, 2008) h. 81-82

<sup>39</sup>

KOMPAS.com, <https://www.youtube.com/live/3ueBMel6mog?feature=share>, 19-01-2023.

bookkeeping of the land in one Complete Village. The PP 10/1961 Program product is a list of contents of physical data and juridical data, as an implementation of Article 19 paragraph 2 letter a of Law 5/1960 UUPA.

In order to support the acceleration of land registration, based on Minister of Home Affairs Regulation (Permendagri) No. 14 Years 1975 Concerning the Activation of Land Registration and the Granting of Certificates in the Context of Measuring Village by Village Towards a Complete Village In accordance with PP No.10 of 1961, namely the PP 10 Project in the context of Complete Village activities through sources of funds from the State Revenue Expenditure Budget (APBN), but considering the source Human resources, funds and technology are limited, so they have not resulted in significant acceleration. The author has carried out PP 10 Project activities in the era of 1985 in 2 (two) villages in Prembun District and in 1986 in 1 (one) village in Pemalang Regency who at that time served at the Office of the Directorate of Agrarian Affairs of Central Java Province in the Field of Measurement and Registration Land.<sup>40</sup>

The PP 10/1961 Registration Map is useful as a preparation for measurement service activities and registration of certificates of land parcels in the complete village, but unfortunately the map is not used optimally, namely followed up with collective certification activities by working with the complete village or local government to financing. In that era, it was seen that there was still a lack of socialization and opportunities for harmonious coordination to help villagers who owned plots of land.<sup>41</sup>

In its journey, given the limited budget, Land Registration activities funded by the State were also carried out through Incomplete/Sporadic Village Land Registration which was carried out en masse starting based on Minister of Home Affairs Decree No. 189 of 1981 concerning the National Agrarian Operations Project (PRONA) with sources the funds come from the State Revenue Expenditure Budget (APBN). This is done in almost every district and city with limited target areas for certification. However, the level of acceleration of the quantity of certification through the PP 10/1961 and PRONA Projects is not that special, while the PRONA mapping cannot fulfill the PP 10/1961 Complete Village Registration Map because the certification is only partial, namely a small part of the village area designated for PRONA.

#### **Adjudication Certification PP 24/1997 Land Registration**

According to Koes Widarbo,<sup>42</sup> PP 10/1961 is repealed, no longer valid and replaced with PP 24/1997 is contained in the General Explanation with the following background:

<sup>40</sup> Koes Widarbo: *Pelaksanaan Tugas Kegiatan PP 10/1961 di Kec. Prembun, Kab. Kebumen 1985 dan Kec.Taman, Kab.Pemalang, 1986*, Direktorat Agraria provinsi Jawa Tengah (Semarang: Bidang Pengukuran dan Pendaftaran Tanah, 1985-1986).

<sup>41</sup> Koes Widarbo, *Pelaksanaan Tugas Kegiatan Pensertifikatan Ajudikasi Th.1998* (Kota Semarang: Kecamatan Mijen, 1998)

<sup>42</sup> Koes Widarbo, *Manfaat Pendaftaran Tanah Sistematis Lengkap Dalam Rangka Mewujudkan Pendaftaran Tanah Sistematis Publikasi Positif Di Indonesia, Proposal Penelitian Disertasi*, Universitas Jember, Fakultas Hukum, 2022,h.162-163.

land registration progress activities based on PP 10/1961 in a duration of more than 35 years, the results are less significant. 55 million plots of land with former Indonesian rights and former land rights with Western rights that have met the registration requirements, only 16.3 million parcels of certificates have been completed. While there continues to be additions to their fields, both originating from inheritance and from various legal actions. The estimated number of land parcels subject to registration requirements during the Second Long Term Development will be 75 million land parcels.

The obstacles to its implementation are:

1. Limited funding, tools and personnel;
2. The number of parcels of land is very high and spread over a wide expanse of territory;
3. The means of land ownership and control are incomplete or even without evidence;
4. Aspects of its legal instruments as base its implementation is not yet relevant to produce effective and efficient registration activities, with legal certainty in the land sector with better results for national development; it requires improvement of land registration regulations which are still scattered in many laws and regulations.

PP 24/1997 still maintains the objectives and systems implemented in PP 10/1961 as a follow-up to Article 19 UU 5/1960 UUPA. The aim is to guarantee legal certainty in the land sector and then to be complemented by the purpose of land registration in PP 24/1997, besides guaranteeing legal certainty it also provides legal protection for holders of land rights. As for the publication system, namely adhering to a negative publication system that contains positive elements as PP 10/1961, the products are letters of proof of rights functioning as a strong means of proof, as stipulated in Article 19 paragraph 2 letter c, Article 23 paragraph 2, Article 32 paragraph 2 and Article 38 paragraph 2 of Law 5/1960 UUPA.

The implementation of the first land registration (issuance of certificates) consists of two types:

#### **a) Systematic Land Registration:**

i.e., the first-time land registration (certification) is carried out using a simultaneous model, covering all land registration objects that have not been certified in the location of an area or only a part of a village or kelurahan; the product is certificate only.

#### **b) Sporadic Land Registration:**

namely land registration activities for the first time (certification) regarding the service of one or several objects in the field of land registration in an area or part of a village or sub-district individually or in groups (mass).

Acceleration of land registration is carried out through the activities of Systematic Land Registration (PTS) PP 24/1997 held through Adjudication, the positive thing is that the target is a certificate product but the concept is not measurement and cadastral mapping of each field as is the case with PP 10/1961, but the risk of weak areas being mapped is only those who are certified, while owners who do not participate in registering their rights are not also measured, so that data is not obtained on every plot of land, let alone the validity of the data.



### Complete Systematic Land Registration (PTSL)

According to Koes Widarbo,<sup>43</sup> Considering that the acceleration of land title certificates is still considered slow, both through routine/sporadic service activities both individually, mass, and project certification PP No.10 of 1961, in the form of a complete Village which was then replaced with PTS Adjudication and PRONA, the results were in 2017 only 30% of the total plots in Indonesia with a total of 126 million plots of land outside forest areas are certified.

Against the background of the above and the results of an evaluation of the strengths, opportunities and weaknesses, threats approach. The Government of the Republic of Indonesia through the Ministry of Agrarian Spatial Planning/National Land Agency followed up on the success of the accelerated land registration program through PTS Adjudication. based on PP No. 24 Th. 1997 jo. PMNA/KBPN No.3 Th.1997. The Adjudication PTS was refined to become a Complete Systematic Land Registration (PTSL) based on the Regulation of the Minister of Agrarian Spatial Planning/Head of the National Land Agency Number 35 of 2016 (Permen. ATR/Ka.BPN No.35 of 2016), supplemented by a Permen. ATR/Ka.BPN No.12 Th.2017. Then replaced with Candies. ATR/ Ka. BPN No. 6 Th. 2018. Equipped with PTSL Technical Guidelines (Juknis) every year it is refined according to the situation and conditions of its development needs,

The problems in general are the implementation of main tasks and functions (tupoksi) in community service activities by the Government, especially in the Ministry of Education. ATR/BPN. One of them is limited Human Resources (HR), especially the State Civil Apparatus (ASN) measurement officers who require certain technical expertise as a task force to collect physical data (puldasi). As a solution, the procurement of non-ASN measuring officers is recruited from third parties, namely based on Permen ATR/Ka. BPN No. 33 Th.2016 perfected with Candy. ATR/ Ka. BPN No. 11 Th.2017. Meanwhile, what is no less important is the need for human resources in the field of administration, especially the juridical collection task force (puldadis), according to administration officers in the field/village.

PTSL activities are carried out by grouping 4 (four) clusters (classifications) as currently regulated in the 2018 PTSL Technical Guidelines for the Ministry of ATR/BPN consisting of 4 clusters:

1. Cluster 1, namely land parcels whose physical data and juridical data meet the requirements for the issuance of land rights certificates.
2. Cluster 2, namely land parcels whose physical data and juridical data meet the requirements for the issuance of certificates of land rights but there are cases in court and/or disputes.
3. Cluster 3, namely land parcels whose physical data and juridical data cannot be recorded and certificates of land rights issued because the subject and/or object of the rights have not met certain requirements stipulated in this Ministerial Regulation; And

4. Cluster 4, i.e., land parcels whose object and subject have been registered and have been certified with Land Rights, both uncharted and already mapped but not in accordance with field conditions or changes in physical data, must be mapped onto a Complete Systematic Land Registration Map.

According to Koes Widarbo,<sup>44</sup> from a management point of view, this PTSL implementation is a refinement of the Adjudication PTS, namely the main thing is the merger of the PTS Program and PP 10/1961 Project. All plots of land in one village/kelurahan or with another equivalent name are registered/mapped with the product, in addition to the certificate of land rights (K.1.) as well as products K.2., K.3. and K.4.

The progress of PTSL within 3 years (2017-2019) is as follows:

- FY 2017 with a target of 5,000,000 fields; The realization is a map of 4,906,525 land parcels; certificates (K1) totaling 4,056,207 fields, K2 totaling 444 fields, K3 totaling 535,085 fields and totaling 477,777 fields;
- TA. 2018 with a target of 7 million fields; The realization is Map of Land plots totaling 8,406,293; certificates (K1) totaling 5,502,816 fields, K2 totaling 2,232 fields, K3 totaling 2,180,628 fields totaling 1,170,472 fields;
- TA. 2019 with a target of 9 million; Temporary realization as of October 1 2019, namely Map of Land plots totaling 7,612,759 fields, certificates (K1) totaling 4,126,105 fields, K2 totaling 255 fields, K3 since 2019 consisting of: K3(1) namely 542,065 fields, K3(2) namely a total of 39,643 fields, K3(3) namely a number of 1,810,440 fields; K4 with 914,615 fields; and up to the realization of PTSL in 2019 as many as 62.4 million plots of land had their certificates issued; figure of 49.58% of the 126 million plots of land in Indonesia, a very significant increase of 19.58% in just 3 (three years) when compared to the progress before the implementation of PTSL until December 31 Th.2016 (56 years) only reached yield 30%.
- However, considering that since 2019 there has been a Covid 19 pandemic, this has resulted in decreased realization, as well as the 2020 period.
- Evaluating the implementation of PTSL TA in 2017 and 2018 it was found that the cluster (K) 3 land parcel object with the product land plot map (PBT) with the variables part of the different problems. As for the solution, since the PTSL Technical Guidelines for 2019 to 2022,<sup>45</sup> for cluster (K) 3 PTSL is regulated in more detail in the 2022 PTSL Technical Guidelines, namely as follows:
  1. K3.1 Cluster:
 

The product is physical data and juridical data for proving rights and announcements, but the certificate cannot be recorded and issued because the subject and/or object of the rights have not fulfilled certain requirements, namely the location (object) of the PTSL is in the area of the Indicative

<sup>43</sup> Koes Widarbo, *Manfaat Pendaftaran Tanah Sistematis Lengkap Dalam Rangka Mewujudkan Pendaftaran Tanah Sistematis Publikasi Positif Di Indonesia, Proposal Penelitian Disertasi*, Universitas Jember, Fakultas Hukum, 2022,h.171

<sup>44</sup> Ibid, p. 172.

<sup>45</sup> Kemen.ATR/BPN, *Petunjuk Teknis Pendaftaran Tanah Sistematis Lengkap (PTSL) Tahun 2021*, (Jakarta: Direktorat Jenderal Infrastruktur Keagrariaan, 2021).

Map for Termination of Granting New Permits (PIPPIB) (according to the Letter Secretary General HR.01/634-100/IV/2020 dated 20 April 2020).

2. K3.2. Cluster:  
The product is the same as cluster K.3.1. but the subject does not meet the requirements in the PTSL program, namely P3MB, Prk5; ABMAT, Ulayat Land, Houses of Class III which have not been paid for in full; object of nationalization. or the subject is a foreign citizen, BUMN/BUMD/BHMN, private legal entity; consolidation of land that cannot be issued a certificate in accordance with the provisions.
3. K3.3 cluster:  
PTSL products held up to the stage of physical data collection because there is no budget for Land Rights Certificates (SHAT) in the current fiscal year.
4. K3.4 cluster:  
PTSL products that are held up to the stage of filing physical data and juridical data without being followed up by research on juridical data for proving rights/Land Examination due to:
  - a) the available budget is only for puldasik and puldadis (Puldataan);
  - b) the subject does not want his plot of land to be certified.

PTSL's next plan is as follows:

1. FY 2020 with a Target of 10 million;
2. FY 2021 and so on every year the target is to increase by 2 million fields;
3. FY 2024 targets all land parcels in Indonesia to be registered (K1, K2, K3 and K4); And
4. Determination of Positive Publication System Registration Targets.<sup>46</sup>

The objectives of PTSL in the framework of Positive Publication System Land Registration are as follows: Accelerate Land Registration as mandated by Article 19 Paragraph (1) UUPA throughout the territory of the Republic of Indonesia, by improving and increasing the land registration data base to become land information that is accurate, valid, link-up, integrated with the data and repositioning the location of the fields between the map and the field as well up to date as set forth in the Complete Village/Kelurahan Declaration (DD/KL) as stipulated in Permen ATR/BPN No. 6 of 2018, the roadmap for the Directorate General of Infrastructure at the January 2020 Ministry of Agrarian and National Land Agency Work Meeting in Jakarta, PTSL Technical Guidelines Th. 2020, Complete City/Regency Land Registration Technical Instructions 2019 and Circular of the Secretary General. Th. 2020 Page: PTSL Output Reporting.<sup>47</sup>So the readiness to guarantee the correctness of the land registration database (land) is the % percentage of DD/KL products, while until

January 1 2023 it has only reached 1.23%,<sup>48</sup> so that there is still a very low % of readiness to guarantee the correctness of data by the State as a requirement for realizing the Positive Publication System Land Registration in Indonesia. The purpose of PTSL, whose essence is the purpose of Land Registration, is to provide legal certainty and legal protection of community land rights based on the principles of simple, fast, smooth, safe, fair, equitable and open and accountable, so as to increase the welfare and prosperity of society and the country's economy, as well as reduce and preventing disputes and conflicts over land registration as stated in Article 3 PP.24 of 1997. Completing the Rights Registration System that has been used since PP 10/1961 by changing the Negative Publication System with a Positive Publication System.

#### 4. Conclusion

Based on the results and discussion above, it can be concluded from the ontological legal philosophy that the land registration system in Indonesia which adheres to a rights registration system is a positive publication system, but requires guarantees of the correctness of the land registration database (land) by the State. Epistemologically from the philosophy of law, how is the preparedness of the truth of the land data base in Indonesia set forth in the Complete Village/Kelurahan Declaration (DD/KL); the result is that progress has only reached 1.23% throughout Indonesia, so that in general the level of % progress is still very low, unless there is a policy from the Ministry of Agrarian Affairs/BPN that for cities/regencies/kotibs that have declared DD/KL, then complete District Declarations and Declarations City/District/Kotib Complete in accordance with applicable laws and regulations which can be legally justified.

If the progress of DDKL has been optimally fulfilled, then a new Positive Publication System Land Registration is proposed in the Land Bill, in order to revise the provisions of Article 19 paragraph 2 letter c of Law 5/1960 UUPA that the letters of evidence are strong, the revision of the refinement in the Land Bill becomes letters of proof or certificates of absolute rights. From an axiological point of view, the legal philosophy is that the establishment of a Positive Publication System Land Registration means that the State guarantees the correctness of the data on the title certificate, the State guarantees legal certainty and legal protection for the holders of their rights by adhering to 3 principles, namely mirrors, curtains and insurance, so that as a solution to dealing with cases land conflicts, including land mafia cases.

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<sup>46</sup> Kemen.ATR/BPN, *Pendaftaran Tanah Sistematis Lengkap*, Set.Jen, Pusdatin, Jakarta, 2019

<sup>47</sup> Koes Widarbo, *Manfaat Pendaftaran Tanah Sistematis Lengkap Dalam Rangka Mewujudkan Pendaftaran Tanah Sistematis Publikasi Positif Di Indonesia, Proposal Penelitian Disertasi*, Universitas Jember, Fakultas Hukum, 2022,h.175.

<sup>48</sup> Kementerian ATR/BPN, *Laporan PTSL 2022* (Jakarta, Januari 2023).

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