

LEGAL ASSURANCE OF THE RIGHT OF THE CERTIFIED LAND AGAINST ADAT LAW IN THE LAND LAW SYSTEM IN INDONESIA

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Abstract

In the national development, the role of land for the fulfilment of various purposes will increase, either as a place to live or for business activities. In relation to that will also increase the need for support in the form of guarantee of legal assurance in the field of land. The result of the research is the conception of the state of Indonesia as a state law. The contains of meaning in the administration of government and the state based on the law, the protection of the law is a universal concept of the rule of law. The legal assurance on land rights as intended by the UUPA encompasses three things, namely the assurance of the object of land rights, assurance on the subject of land rights and assurance about the status of land rights. Legal conception of land title certificate is a proof that was issued by an authorized legal institution, containing juridical data and physical data which is used as evidence of ownership of land rights in order to provide assurance of legal assurance to a plot of land owned or possessed by a person or legal entity. With the certificate of rights, it is expected that the juridical law can guarantee the legal assurance and the right by the state for the holder of the right to the land. This country's guarantee is granted to the owner or the holder of the certificate because the land is already registered in National Land Agency.

Keywords: *Legal Assurance, Customary Law, Certified Land, Land Law System in Indonesia.*

1. Introduction

1.1 Background

In human life, the existence of the land cannot be separated from all human behaviour itself, because the land is a place for humans to live and continue their life (Sutedi, 2009: 31). The existence of land in the life of the world as one of the natural resources is a gift of God Almighty. The land is the most basic necessity of human life as a source of livelihood. Even the soil and man cannot be separated from birth until death. Humans live and perform activities on the ground so that every human being is related to the land. The importance of land for humans causes the land to have value and benefits for long-term development, the

role of land for the fulfilment of various purposes will increase.

The customary law as an unwritten law that lives in society is a reflection of the Indonesian personality which is entrenched and rooted in the culture of the nation. Each tribe and region have different customary laws, but the distinction becomes an integration of the national unity (Bhineka Tunggal Ika). The existence of indigenous and tribal peoples in Indonesia is contained in the 1945 Constitution (Second Amendment) in Article 18 B Paragraph (2) and Article 28 I Paragraph (3). As the explanation of Article 18 B Paragraph (2) and Article 28 I Paragraph (3), Law Number 39 Year 1999 regarding Human Rights regulating the respect for customary rights of indigenous peoples, in Article 6 paragraph (1) the framework of human rights

enforcement, the distinction and position of indigenous and tribal peoples must be observed and protected by the laws of society and government. In paragraph (2), the cultural identity of indigenous and tribal peoples, including customary land is protected.

Soil and land is the vital element of nation and state because it becomes the source of justice and prosperity of society. The relationship of the Indonesian nation to the land characterizes a lasting relationship (BPN, 2013: 1). The granting of legal guarantees in the land sector, first, requires the availability of written, complete and clear legal instruments. Land and building are one of the basic human needs that affect the existence of each individual because every human being needs a place to settle. Land rights have a very important role in the community, the more densely populated will add more importance to the position of it.

The right to control over the land from the state may be granted to an individual, both Indonesian citizens and foreign nationals, a group of persons together, and private legal entities as well as public legal entities (Santoso, 2010: 87). This is achieved through land registration as part of the land registration process, a certificate as the strongest land title verification tool. Land documents as a result of the land registration process are written documents containing the physical data and jurisdiction data of the land concerned (Article 1 point 1 PP No. 24 of 1997). It is included also with the type of rights, e.g. property rights, tenure, building use rights, and so forth. That is why the certificate of land is very important for its existence in order to obtain a legal assurance for the holder of the right to land and other parties interested in the land. It is not surprising to hear that conflict often occurs because people are concerned about the land. Such conflicts can be due to the seizure of ownership rights, annexation, destruction, and fraud in the process of buying and selling. The emergence of the conflict triggered because the population is getting bigger, but not balanced with the available land area (Keumala and Setiyono, 2009: 6).

The close relationship between man and the land is everywhere and the relationship is coloured by the existence of various functions of the land for human life. The state has the right to control the earth, water, land, space and natural resources contained. The motion control does not mean to possess, however, to organize and administer its designation, use, inventory and maintenance, to determine and regulate which may belong to parts of the earth, water and space (the subject of rights) and legal acts concerning earth, water, and space (Gautama 1993: 92). The state does not have to act as the party owning the land, only as the party who controls the land, even the control is limited, i.e. in the use of authority derived from this easement right (Muchsan, 2000: 3).

Land issues are not only a matter of implementation but also came out of the problems arising from the expansion of land requirement (Sodiki, 2013: 238). Renewal of the field of agrarian law especially land registration is carried out with changes to land registration rules; it is intended in order to ensure legal assurance. Basically, those registered with the land are the right. The function of rights is more dominant in the registration of registered land, where the ultimate purpose of the land registration is to allow its right.

One of the main objectives of the UUPA is to realize legal assurance regarding land rights for the people of Indonesia. There are two attempts to realize the legal assurance, to provide a written, complete, and clear legal instrument; and carry out the registration of the land under its control and for the government to implement the land policy (Santoso, 2010: 2). The right to land is proved by a certificate which aims to provide legal assurance and legal protection to the right holder of a plot of land, apartment units and other registered rights so as to easily prove himself / holder of the rights (Article 3 letter a PP No. 24 of 1997).

Proof of land ownership with girik is not the ownership proof of land rights, but merely proof of payment of taxes on land. Thus, if on the plot of the same land, there are the claims of the seal holders with the claims of

the proof of land title holders (certificate), then the certificate holder of land according to the law will have a stronger claim of material rights. However, the problem is not that simple. In terms of the ownership of the proof of rights to land through the things that are contrary to law, it would have the potential for conflict over land, e.g. many lawsuits over certified land ownership. This case does not provide the legal assurance for landowners. The issue in the realization of a claim of title to a certified land may be defeated by a proof of ownership of a seal. In this case, registration of land with negative stelsel does not provide legal assurance and justice for holders of certified land rights.

1.2 Problem Formulation

Based on the description of the background, in this study, there are some problems formulated to find its solution scientifically. Particularly, how the concept of legal assurance of land ownership based on customary law confronted with certified land in the Indonesian system of land law.

2. Method

This research on the legal assurance ownership of certified land rights in the Indonesian land law system uses analytical descriptive research method. It is a method that examines the problems in society and the prevailing procedures in society as well as certain situations, including on relationships, activities, attitudes, views, and ongoing processes and the effects of a phenomenon (Nazir, 1999: 63-64). In relation to the research topic, it will be reviewed secondary data relating to legal assurance of ownership of certified land rights in the Indonesian legal system of land. While the method of approach used in this research is normative juridical approach method. It is to set certain standard or norm to a phenomenon by examining secondary data.

3. Result and Discussion

A country is based on the principle of equality will protect the poor citizen to fulfil

their living standard. The concept of the Welfare State developed in European countries and even extends almost to all countries in the world. The concept of the welfare state is contained in the Fourth Paragraph of the Preamble to the 1945 Constitution, which states: "The State protects all Indonesians, promotes the common prosperity, the intellectual life of the nation and the realization of social justice". The basic idea of the welfare state moved from the 18th century when Jeremy Bentham promoted the idea that governments have a responsibility to guarantee the greatest happiness (welfare) of the greatest number of their citizens. Bentham uses the term utility to explain the concept of happiness or welfare (Syahrani, 1999: 21). P. De Haan states there are four elements and characteristics of the welfare state law. They are:

1. The basic law provides special social protection which is the legal source of all legislation in social affairs;
2. Require the government to fulfil all the citizen requirements in real rights accordance with the Constitution;
3. The law should encourage a new social insurance for people's rights empowerment; and
4. Consultation with parliament if there is a right that is not contradictory to the Constitution (Fachruddin, 2004: 36-37).

The concept of the welfare state has become the basis of the position and function of government (bestuursfunctie) in modern countries. The welfare state is an entity of the concept of a formal (classical) legal state, based on the idea of strict supervision of the exercise of state power (Tjandra, 2014: 1). Then the concept of the welfare state is reflected in Article 33 Paragraph (3) of the 1945 Constitution, stating: "The earth, water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people". The concept of the welfare state in our legislation is for the first time known as the "governing state" (Siahaan, 2005: 18). The State of Indonesia is a welfare state means that there is a state responsibility to develop state policies in various fields of welfare and improve the quality of public services through the provision of various facilities needed by the community (Muhadi, 2010).

According to Mochtar Kusumaatmadja, "The law has dimensions to support national development through specially designed legislation to mobilize development by mobilizing and motivating the community as development actors, including related government apparatus" (Kusumaatmadja, 2006: 13-14). Development in the broadest sense encompasses all life of the people, not only in terms of economic life but must also the development of various aspects of community life widely (Kusumaatmadja, 2006: 19). It is inseparable to the development of law, social systematically (Rahardjo, 1991: 209). Therefore, the role of law here is important to ensure that change occurs in an orderly fashion.

In Integrative Law theory proposed by RomliAtmasmita, which states that law can be defined as a system of norm, behaviour, and values. The three legal substances in the context of Indonesian society should be viewed as a united entity in the face and anticipation of the worst possible of the present century of globalization by not breaking away from the traditional nature of Indonesian society that still prioritizes moral and social values. The three legal substances are set forth in a container called "tripartite character of the Indonesian legal theory of Social and Bureucratic Engineering" (Atmasmita, 2012: 96).

In Indonesia, the function of law in development is as a means of community renewal, based on the assumption that the existence of order in development is something that is important and indispensable. In addition, the law as a principle can serve as an infrastructure to channel towards the activities of citizens to the goals desired by a planned change. Of course, the above functions should be done in addition to the function of law as a means of a social control system. In connection with the legal function, Mochtar Kusumaatmadja proposed the conception of law as a means of a renewal of society in development based on thought are:

1. That there is order in the development or renewal effort. It is something that is desirable or even perceived (absolutely) necessary;

2. That law in the sense of rule can indeed function as a tool (regulator) or a means of development in the sense of channelling human activities in the direction desired by development or renewal (Kusumaatmadja, 1976: 9).

Given the legal assurance, citizens will always get legal protection because they have assurance about how citizens solve legal problems, how they settle disputes and so on. Law is as a means of social engineering, meaningful use of conscious law to achieve order or justice of society as aspired as a tool of social renewal. The legal issue is as a tool of social change with respect to the function of law in development and even the relationship between legal change and community change (Tanya et al, 2010: 162-164).

Implicitly, the formulation of the law in force in Indonesia cannot be separated from the ideology of the Indonesian people, Pancasila (Limbong, 2012: 74). Pancasila as the foundation and philosophy of Indonesia gives confidence that the happiness, prosperity in social interaction among individuals can only be achieved if based on harmony and balance in life as individuals, between individuals, individuals with government and individuals with natural and individual with The One Almighty God. In the relations of the Indonesian nation with its land, Pancasila is used as the guideline especially the Fifth Precept so that the fulfillment of the need for the land for the individual must not be absolute for the sake of personal interest but must still pay attention to the interests of others and the interest of the nation. Pancasila is an ideology in various areas of social life, nation and state (Tumija, 2010).

The land of indigenous peoples has a purpose and important position because, by its nature, land is one of property which is fixed and not affected by the circumstances that occur with it, the fact that the land serves as a place to live fellowship, giving life to citizens communion, where the fellowship is buried, and the dwelling of supernatural beings of fellowship. According to these facts, the life of indigenous peoples have a close relationship

with a legal partnership located on the land, even the relationship is magical religion. In the past, Dayak people, Dayak people have the belief that the land is our life and breath. Hak ulayat (beschikkingsrecht) is the right of the village according to custom and its willingness to control the land in its territory for the benefit of another (strangers) by paying harm to the Village, in which case the Village interferes with the establishment of the land and is responsible for cases that have not yet been resolved (Eddy Ruchiyat, 1984: 31).

The content of the authority of customary rights states that the relationship between custom law peoples is a mastering relationship, not a property relationship as well as in the concept of the relationship between the state and the land according to Article 33 paragraph (3) of the 1945 Constitution provides that: "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people ". The Basic Agrarian Law contains basic rules and directions of national agrarian policy, especially human relations with land (Erwiningsih, 2009: 4). The control over natural resources including land by the state is to achieve what is mentioned in Article 33 Paragraph (4) of the 1945 Constitution: "The national economy is organized based on the principles of togetherness, fair efficiency, sustainability, environmental insight, independence, and by maintaining a balance of progress and national economic unity".

Property rights are very basic rights guaranteed by the Constitution. Legal assurance of land for those who have not yet certified the rights to certified land, when related to Article 28D paragraph (1) of the 1945 Constitution, which states that: "Everyone is entitled to equitable recognition, guarantee, protection and legal assurance and equal treatment before the law". Whereas based on Article 28H paragraph (4) of the 1945 Constitution provides that "every person shall have the right of private property and the right shall not be arbitrarily taken over by anybody". Meanwhile, the Basic Agrarian Law (UUPA) as the ground rule of the national land law provides that "land ownership is the

strongest, hereditary and sovereign right that people can have on the land, given the provision that all land rights have a social function" (Article 20 UUPA). In the concept of law, the relationship between a person and an object is a relationship called "Right". The meaning of the title is the right of ownership of an object called property rights to the object or what is known as "property right". The word property itself in the meaning of the law emphasizes the right rather than the object (Wahid, 2008: 43). The legal aspect is essential to achieve the legal assurance necessary for land ownership. All material rights to land are listed items. A property right is:

1. An object-following right (droit de suite);
2. A right that has priority over the material rights (in rem: subject matter) of the younger (Droit de priorite, prior temporal potential); and
3. A right which has priority over individual rights (in personam: a subject of a person) in general (Droit de preference) (Hutagalung, 2012: 6).

The state has the power to control the land within its territory. It is affirmed that the state not only controls the land but also has the authority to regulate the designation of those lands. UUPA has clearly defined land rights such as property rights, use rights, building rights, usage rights, lease rights for buildings and temporary land rights such as liens, profit sharing rights, rights to ride and so on. Understanding of the earth includes the surface of the earth (called the soil), the body of the earth beneath it and which is under water. Thus the understanding of land covers the surface of the earth in the land and the surface of the earth under water, including seawater (Harsono, 2003: 6). This is stipulated in Article 2 paragraph (2) of the BAL that authorizes the state to:

1. organize the use, stockpiling and maintenance of the earth, water and space;
2. determine and regulate legal relationships between people and the earth, water and space; and
3. determine and regulate legal relationships concerning the earth, water and space.

While ownership of land title is in order to realize legal assurance as regulated in Article 19 UUPA, which states:

1. To ensure legal assurance by the Government, there is a registration of land throughout the territory of the Republic of Indonesia in accordance with the provisions stipulated by a Government Regulation".

2. The registration referred to in paragraph (1) of this Article includes:

a. measurement of land mapping and accounting;

b. registration of land rights and transferring of those rights;

c. the provision of letters of proof of rights, valid as a powerful evidentiary instrument.

3. Land registration shall be conducted in view of the state and society, the need for socio-economic traffic and the possibility of its operation, in consideration of the Minister of Agrarian Affairs.

4. In the government, a regulation shall be stipulated the costs associated with the registration referred to in paragraph (1) above, provided that the unable people are exempted from payment of such costs.

Based on Article 19 of the UUPA mentioned above, it is affirmed in Article 3 of Government Regulation no. 24 of 1997 has been further stipulated as an affirmation of the right as follows:

1. To provide legal assurance and legal protection to the rights holder of a plot of land, apartment units and other registered rights so as to easily prove himself/herself as the holder of the rights concerned.

2. To provide information to interested parties including the Government in order to easily obtain the necessary data in carrying out legal acts concerning the already registered parcels of land and apartment units.

3. For the implementation of the orderly administration of land.

So it is clear Government Regulation no 24 of 1997 has enriched the provisions of Article 19 of the UUAP. They are:

1. Whereas with the issuance of a certificate of land rights, the owners are given legal assurance and legal protection.

2. In this age of information the Land Office as the frontline office must be well maintained any information needed for a piece of land, either for the government; so that it can plan the development of the country, and also for the community: it is

important to be able to decide what is needed where visible land, i.e. physical and juridical data including apartment units. Information is open to the public means it can be given whatever information is needed on a plot of land /buildings that exist.

3. Therefore, it is necessary for the orderly administration of land to be a natural thing (Parlindungan, 2009: 2).

The legal assurance on land rights as intended by the UUPA encompasses three things, namely the assurance of the object of land rights, assurance on the subject of land rights and assurance about the status of land rights. In the society, the arrangement of an object there is a legal system, but then the situation in the field requires a change due to the relationship between the subject of law that is not systematic, so that in society often change. This shows that in society, there are a lot of factors that influence it, power and pull each other interesting and collide in it cause irregularities. In other words, law and society are not a systematic, but full of irregularities that became known as theories of legal disorder developed by Charles Stamford (Salman and Susanto, 2005: 105). However, the law should ensure the existence of an order especially in the conditions of the developing society, since that order is one of the goals of the developing society; the law becomes an indispensable tool in the development process (Kusumaatmadja, 2006: 3).

The land is important for human life. In essence, the meaning and strategic position of the land in the life of Indonesian society, not only contains the physical aspects, but also the social, economic, cultural, political, defence and assurance aspects of the law. Land for the community has a multi-dimensional meaning. From the economic side, the land is a means of production that can bring prosperity. Politically, the land can determine one's position in society's decision-making, and as a culture that can determine the high social status of the owner (Sutedi, 2009: 45). This aspect is a central issue that is related as an integrated entity in the decision process of land law policy conducted by the government. When looking at some of the principles surrounding the national land law on landholders, they are:

1. The harvesting and use of land by any person and for any purpose shall be based on the land rights provided by national land law;
2. Tenure and use of land without any basis of rights (illegal), not justified, even threatened by criminal sanctions (Law Number 51 Prp 1960);
3. The tenure and use of land on the basis of rights provided by the laws of the National Land, were protected by law against any interference by any party, whether by fellow members of the community or even by the authorities, if there is no legal basis;
4. There shall be no justification of any form of coercion by any party to the holder of the right to the land to surrender his or her land and / or receive any unacceptable remuneration, including the use of payment penalty institution followed by consignment to the district court (Article 1404 Civil Code) , 1992: 16).

In the development of the realization of such a role of land law, it turns out in the empirical level often reap a variety of criticism, especially on its ability to achieve substantive justice that is not distorted by the interests of certain elites, because the reality of law is no more as a major supporter of power and privilege that resulted in marginalizing the certain people (Susanto, 1992: 8). The public law relationship regulated by the 1945 Constitution uses the term "controlled" as defined in Article 2 paragraph (2) of the BAL, which states:

1. Organize the designation, use, inventory and maintenance of the earth, water and space;
2. Define and regulate the legal relationships between persons with the earth, water and space; and
3. Determine and regulate legal relationships between persons and legal acts concerning the earth, water and space. Basic consideration of the birth of BAL as in various literature explained that BAL was born in order to eliminate the dualism in the field of agrarian law. The national agrarian law is characterized by the management of land resources for the welfare of the people. The philosophical reason is that the land is a gift of God to mankind (the people of Indonesia) to cultivate in order to meet its needs, in order

to achieve prosperity or prosperity together with justice. The national land law requires legal assurance (land rights) as evidenced by the existence of a letter or certificate, the acquisition of land rights into the acquisition of land rights is not formally guaranteed the existence of "right" assurance. Since the establishment of the BAL in 1960, it has been instructed by the community to convert the rights of old lands into certified land rights. However, due to the lack of public awareness and various other obstacles, the soil that has not been converted so much has not been converted. By law, land that has not been certified cannot be said to be the owned by the person who controls it. Girik is only proof that the holder of the girik is given the power to control the land and as a taxpayer for the land under his control. Because according to the UUPA, land ownership must be controlled by a right to land based on the certificate, hence the girik cannot be equalized with the certificate on the land.

The land is the most important element and the state capital used to realize the welfare and prosperity of all the people because in the context of Indonesia agrarian, the land is the main factor of livelihood of the majority of people. Thus, it must be empowered for the purpose of achieved people's prosperity. Achieving prosperity in an independent Indonesian state is not solely the responsibility of society, but rather the responsibility of the state or government. Article 33 of the 1945 Constitution requires the government to take an active part in seeking the achievement of the people's welfare. This means an independent Indonesian state is a welfare state (Manan, 1995: 55). The desire to form a welfare state is a normative attempt of the foundations contained in the Preamble to the 1945 Constitution, among others: "Then to establish an Indonesian state and to advance the common welfare, to educate the life of the nation". The regulatory authority of the state is aimed at achieving the greatest prosperity of the people. The meaning of the greatest prosperity of the people is prosperity for as many people as possible without violating the rights and justice, while the importance of welfare in relation to the utilization of land for the purpose of the state to complement and support the

community's business (Sumardjono 1998: 7-8). With the enactment of BAL, the nation of Indonesia already has a national Agrarian Law, aiming:

1. To lay the groundwork for the preparation of national agrarian law, which would be a means to bring prosperity, happiness and justice to the State and people, especially the peasants, in the framework of a just and prosperous society;
2. Laying the groundwork for holding unity and simplicity in land law; and
3. Laying the groundwork to provide legal assurance of land rights for the people as a whole.

Social justice that has been established by the Indonesian nation as the goal of the established state is not something abstract and not a state that cannot be realized. The necessary action is to revitalize the value of social justice into the sphere of life. The paradigm of land law policy must be restored to the problems that are based on the last two pillars, so that individual rights, as well as communal rights over land are guaranteed and the state respects, protects, and fulfills the people's need for the land as a commune in order realizing land tenure, use, ownership and utilization and management of natural resources on land, democracy-based, justice and sustainable (Widhihandoko, 2005).

The choice of land law policy on negative publicity stelsel (a positive element) refers to the land registration system in the world known to be the first two models or types of land registration, the model of the registration of deeds or so-called land registration with negative publicity stelsel and second, the model of the registration system of land (registration of title) or called positive publicity stelsel (torrens system). The principal purpose of the enactment of the UUPA is to lay the groundwork for the drafting of national agrarian law which will be a tool for bringing prosperity, happiness and justice to the state and people, especially the peasants, in order to bring about a just and prosperous society, the basis for unity and simplicity in land law, and lays the groundwork for providing legal assurance of land rights for all the people. Legal assurance for owners of land rights, by BAL

itself mentioned can only be obtained through the land registration procedure. In realizing the land for justice and welfare, land policy and direction is based on 4 (four) principles, they are:

1. Land should contribute significantly to improve the welfare of the people and generate new sources of prosperity;
2. Land shall contribute significantly to the promotion of a more juster life-based order in relation to the use of land, ownership and ownership of land;
3. Land affairs must contribute significantly to ensuring the sustainability of the Indonesian national and statehood system by providing the widest possible access to future generations of economic resources; and
4. Land should contribute significantly to creating harmonious living arrangements by addressing various land disputes and conflicts and organizing a management system that no longer gives rise to conflict and conflict in the future (Muliawan, 2009: 85).

BAL affirms that the granting of land rights over a certain plot of land is granted for use or exploitation. The granting and possession of the land with the rights of its use shall not be meaningful if its use is limited to the land as the surface of the earth. Utilization of land always coincided with the utilization of what is on the surface of the earth and above. Therefore the rights to land not only authorized to use a certain portion of the earth's surface called the soil, but also the body of the earth beneath it and the water above it. Thus the meaning possessed with the right to the land is the land, in the sense of a certain part of the earth's surface. However, the authority of the use derived from the right to the land is extended to cover some of the earth's existing underground and water bodies and space above it (Harsono, 2003: 18). In the sense of agrarian context, land means the outer surface of the earth with two dimensions of length and width. The law of the land here does not govern the land in all its aspects, but only regulates one aspect of its juridical aspect, which is called the right of land ownership. In the law, the land is a real thing that is in the form of the physical surface of the earth and what is on it man-made. The

main concern, however, is not the land, but to the land ownership and control and development aspect. The object of concern is the rights and obligations with respect to land owned and controlled in various forms of land tenure. Renewal of the field of agrarian law especially land registration is carried out with changes to land registration rules; it is intended in order to move to ensure legal assurance. Land registration includes:

1. Measurement, mapping and accounting of land;
2. Registration of land rights and transfers of those rights; and
3. The provision of a valid proof of title as a strong evidentiary instrument.

Land registration is known to exist in two land registration systems:

1. Positive publication system is a system in which the registration of a person's land in public lists for obtaining rights in good faith cannot be contested. So that the holder of the right in the future will lose his right and only get compensation;
2. Negative publication system is a system in which the registration of a person in the public register as the right holder does not result in the real right to lose his or her right, in other words, the previous rights holder may lose his or her rights if it is proven by a court decision that the holder of the right shall in the future be justified by court decision.

Land and buildings are objects that play an important role in human life. Land and building are one of the basic human needs that affect the existence of each individual because every human needs a place to settle. Land rights have a very important role in human life, the more advanced the community, the more densely populated, will add more importance to the position of the land rights. Given the magnitude of the role of land rights with the increasing price of land, with the enactment of UUPA and its implementing regulations, the transfer of land rights is deemed necessary to be increased higher and regulated separately. In the national development, the role of land for the fulfilment of various purposes will increase both for residential and business purposes. In order to see that Indonesia, in this case, UUPA embraces the system which

of the two registration systems mentioned above, Based on Article 32 paragraph (2) PP. 24 of 1997, which affirms that a plot of land has been issued a legally on behalf of a person or legal entity obtaining the land in good faith and in actual control, the other party who feels the right to the land can no longer demand the exercise of that right if within 5 (five) years of the issuance of the certificate does not submit a written objection to the holder of the land title and the Head of the Land Office concerned or does not file a lawsuit to the Court regarding land tenure or issuance of the certificate.

Land registration also requires the holder of the right to land to register its rights. Etymologically, the certificate comes from the Dutch "certificate" which means a proof letter or certificate proving something. So the land certificate is a certificate proving a person's right to a piece of land, or, in other words, the circumstance states that there is someone who owns certain fields of land and the possession has strong evidence in the form of a letter made by the authorized institution. Viewed from the aspect of the guarantee given by the provision of land title certificates (land title certificates), as a means of verification, the rechtskadaster (land registration) recognize two kinds of systems, negative and positive systems.

In a negative system, the certificate can only be viewed as a proof of the beginning of the title to the land, or the certificate is as one of the strongest evidentiary tools, so that everyone can question it again. Landowners are given a stronger guarantee, when compared to the protection provided to third parties. Thus, the landowner may sue his right to a plot of land from those registered in the cadastre. It contains a positive element, to provide legal assurance to those who have good faith in mastering a plot of land listed as rights holders in a land book and with the issuance of a certificate as one of the strongest evidence. To those who have a right to land will be given a stronger guarantee, a third party should believe and not have to worry if on one occasion the persons listed in the public register will lose their rights or be harmed.

During this time, land issues, especially those related to land measurement and mapping activities, are very easy to occur. One of the causes of the problem is the number of maps used by a land office to map the listed land areas so that the assurance of the location of a plot or plot of land is not guaranteed. This problem can be solved if there is assurance of data regarding the land areas registered in the land office. To create assurance about the listed land areas, a single registration map system should be developed. With a single map, each registered plot of land will be mapped on one map for one area within the corresponding location. To ensure the legal assurance and rights assurance, if the land is controlled by a society for a long time and no other objections, then the land has become the land of a free country. In this case, a written proof is needed which is known to the Head of Village and the Head of the Sub-district to meet the legal assurance. Therefore, an announcement of mass media in print may be necessary for the form of electronic media known in civil law as the principle of publicity. The task of registering land throughout Indonesia shall be born by the government which by Article 19 Paragraph (1) of the UUPA is determined to ensure legal assurance. According to the explanation from UUPA, the implementation of land registration activity is an obligation of the government aims to ensure legal assurance that is rechtscadastre. Recht's cadaster means for the purposes of land registration only and only questioned what rights and who the owner. Legal assurance is something that is still guaranteed by law or other provisions of the state that can protect everything that is owned by someone. With the issuance of a certificate as the final result of land registration activity for the first time, there is a guarantee of legal assurance and legal security for the right holder. In the framework of verifying land rights, the purpose of the issuance of land rights is to easily prove the name of the certificate as the holder of the rights concerned.

A welfare state is a form of democratic government that asserts that the state is responsible for the minimum welfare of the people. In Indonesia, the concept of welfare

refers to the concept of social welfare development, a series of planned and institutional activities aimed at improving the standards and quality of human life. The integrity of the meaning of Pancasila formulated in the preamble of the 1945 Constitution is the improvement of prosperity and welfare of the people's lives that are safe injustice and humane manner. So the perspective of the welfare state in the management of land by the state is the implementation of public obligations implemented by the government, to make the people as the real owner of the land, can get the maximum benefit from the processing of his land. Because the functions of state and government based on Article 33 of the 1945 Constitution, are not the owners of the land, but the boards that must serve the interests of the people. The legal assurance on land rights as intended by the UUPA encompasses three things, namely the assurance of the object of land rights, assurance on the subject of land rights, and assurance about the status of land rights. Renewal of land law based on the 1945 Constitution can provide legal assurance based on the frequent occurrence of lawsuits over land ownership rights by establishing policies on land registration using positive stelsel and formulation of regulations governing the expiration of land registration so as to provide protection and legal assurance of ownership of certified land rights.

4. Conclusion

Legal assurance should be applied to achieve justice and so land policies can be implemented consistently. In order to provide assurance and legal security, to the holder of the right to the land concerned is given a certificate of land rights. Registration of land is done to obtain legal assurance for the holder of land rights and other parties interested in the land. In order to achieve justice, prosperity, protection and legal assurance in the presence of land registration and issuance of certificates, the legal assurance of land rights will be achieved, since the juridical and physical data contained in the land certificate are accepted as correct data. Land title certificate is a proof of land that has been

registered and registered by an authorized legal entity conducted by the state on the basis of law. So with the expenditure of this certificate, indicates that there has been a registration of land done, and this registration will create benefits due to the implementation of legitimate land administration.

Legal assurance on the right to land is to provide assurance about the object of land rights, assurance on the subject of land rights, and assurance about the status of land rights. Legal conception of land title certificate is a proof that issued by an authorized legal institution, containing juridical data and physical data which is used as evidence of ownership of land rights in order to provide assurance of legal assurance and security of rights to a plot of land owned or possessed by a person or legal entity. With the certificate of rights, it is expected that the law can guarantee the legal assurance and the right by the state for the holder of the right to the land. This country's guarantee is granted to the owner or the holder of the certificate may be granted because the land is already registered in the National Land Affairs Agency.

In creating legal assurance the government should change the registration of land from negative stelsel to positive stelsel by listing the expiration of land registration as stipulated in Article 1946 Civil Code so that the absolute right of state replacement by defending absolute right of ownership of land rights. In this case, the government is required to be ready to renew the registration of land to the positive stelsel.

Economic development and community needs related to land, land registration are very important to ensure legal assurance and protection for landowners. Legal assurance is something that is still guaranteed by law. It is hoped that the government can be more responsive in protecting the people against land rights in issuing certificates and should be able to consider by paying attention to the sense of community justice so that people who have the right to land feel protected and the order will be achieved.

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