

COMPARISON ANALYSIS OF LEGAL CERTAIN OF REGISTRATION OF LAND OWNERSHIP BETWEEN INDONESIA WITH MALAYSIA COUNTRIES

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ABSTRACT

Land was place to people stay, to fulfill their need and raise their children, socialize, and do their own religion to carry their own custom. this mean land become attached to human needs itself that needed be proven of the ownership by register the land. In Indonesia and Malaysia, even two of this country is close, but had difference of the land registration system. On Malaysia, that registration system was that land has absolute legal force and cannot be contested if it has been registered. And at Indonesia, the registration system had positive mean be absolute but had negative system at there. This research method uses a comparative law between the existing law in Indonesia and Malaysia on land registration with comparative law (comparative study) so that it is descriptive of the existing law. So that based on the publication system of the two countries, there is a comparison of several things in terms of legal subjects recorded in the certificate and the acquisition of legal certainty. However, in Indonesia, you can still claim the certificate within a maximum of 5 (five) years after the certificate is issued or issued. In contrast to Malaysia, that can no longer be sued unless there was a discovering that during the acquisition process there was a violation of law. that it can be concluded that the legal force of land registration in Malaysia is stronger than land registration in Indonesia which still has leeway to be able to sue again.

Keywords: Laws Comparison, Land Ownership, and Legal Certain.

INTRODUCTION

Land was a place where humans live in search of needs and produce offspring. The history of the land itself was no longer possible to be separated from humans from time to time from time to time, both from many human sides, such as sociological, psychological to political and economic. Which causes the value of land to humans themselves, the source of natural resources itself that comes from the land was very valuable. Because the land itself was also the most important need of life. It causes man to defend the land that has been obtained by him at any cost.

In Article 3 and Article 4 of Government Regulation No. 24 of 1997 in Indonesia, the purpose of land registration is to provide legal certainty and legal protection to anyone who holds rights to existing land.

Although it has been recorded that land problems are often found in Indonesia. Therefore, it was necessary to looked at the comparison of the existing state land registration systems so that they can compare the methods or methods of publication of this land registration. To protect land rights holders, in Indonesia there are 2 kinds of law, namely the principle of *nemo plus juris* with the principle of good faith.

The publication system adopted in Indonesia was a negative system that contains a positive element system. This system was indicating by the existence of a letter of evidence which is a proof of rights that applies as evidence that has strong strength. Strong which does not mean absolute, which means that it is not protected by law which can be sued again as referred to in Government Regulation no. 18 of 2021 concerning land registration. And until now it is still valid and there have been no fundamental changes. Comparing with Malaysia as a country that is also in Southeast Asia or the same ASEAN as Indonesia, which was an allied nation or almost the same, the land law was still applicable in the registration of its land. In this case, land registration in Malaysia is regulated in the National Land Code 1065, which stipulates that it can no longer be contested if the land owner has been registered. That the 1965 National Land Code must not be absolute but guarantee that the land rights will not be revoked.

From the two arrangements for land registration there was a comparison so that in comparison the differences in land rights belonging to the two countries, namely in Indonesia and Malaysia. What makes them interested in conducting legal comparisons on the certainty of rights to certificate holders of property rights in Indonesia and Malaysia. Observing how the comparison of recording and publication systems was carried out between Malaysia and Indonesia.

OBTAINING CERTIFICATE OF OWNERSHIP

Article 20 of the Basic Agrarian Law in Indonesia states that the absolute, strongest rights that people have on land can also be hereditary rights on the condition that they can only be owned by citizens called property rights. While for legal entities with several requirements.

Article 21 paragraph (1) of the Basic Agrarian Law clearly states that property rights can only be owned by Indonesian citizens. The principle that supports this was the principle of nationality/nationality. Against people who have dual citizenship also cannot own land in Indonesia. In Government Regulation No. 18 of 2021 that the latest registration can be carried out electronically.

Although then it was stilled in the adjustment stage so that it can run well in all areas. The ownership rights for registration in Indonesia are based on several things, namely:

1. The government regulations regulate the basis of customary law. In this case that until now the government regulation has not been issued.
2. Based on the Act. That it is necessary to know that there has never been a statutory regulation concerning property rights in accordance with the mandate of Article 50 paragraph (1) of the main agrarian law.
3. Due to a civil event, either because of a will, because of agreements such as buying and selling, swapping and others based on purely civil actions. Another example is born due to *ab instato* inheritance or inheritance in the form of a will.

Property rights obtained from the transfer of land rights can be transferred in accordance with the provisions contained in Article 20 paragraph (2) of the main agrarian law.

1. Switch

This means that the transfer of property rights due to legal events such as death, with the death of land ownership, the rights are transferred automatically to the heirs.

2. Diverted

This means that the transfer of land rights because there is a legal action, the act in question was by buying and selling or exchanging, releasing until it is obtained by the auctioneer.

Land acquisition in Malaysia was obtained in one of the following ways:

1. Buy land belonging to the landlord.
2. File a government land application with the state government.
3. To acquire land by legal process.

In Malaysia, it is generally difficult to obtain land by means of the first and second points, so it was better to get it with the third point, namely by land acquisition with paid compensation or simply by buying and selling the land.

In the process of acquiring land in Malaysia, it was necessary to involve the government, the private sector, and related agencies. The aim was to ensure the avoidance of unfair processes and the amount of compensation that occurs. The application involves several agencies from the state secretaries, mining land administration and property services. This process is also inseparable from the legislative section, namely the high court, legal advisors and lawyers to ensure that everything goes according to the guidelines set.

Legal Strength of Property Rights Certificates from Malaysia and Indonesia

Muntoha as the former Head of the Land Registration Bureau of the Ministry of Agrarian Affairs in Indonesia stated that land registration in Indonesia tends to adopt a negative system that is also positive. This causes that it was stilled possible to repair existing data if there are errors. This registration system in Indonesia was also known as *Quasi-Positive (Pseudo-Positive)*. While the land registration in force in Malaysia, namely the land registration is positive. Positive here means that when the registration has occurred it will have legal force that cannot be contested if it was not founded that the registration was carried out by fraud. This registration uses the Torrens system, this system was invented by Sir Robert Richard Torrens in Australia. This system was known as the registration of titles system. Moving on from this the Torrens system creates several advantages, namely:

1. Setting unpredictable costs
2. Eliminate repeated checks
3. Mute most recordings
4. Strictly state the basis of their rights
5. Protects there are difficulties that are not mentioned in the certificate
6. Eliminates the possibility of counterfeiting
7. Continue to maintain the system without adding bad transactions, or things that add to costs
8. Eliminating the tax base
9. Establish an eternal right and the state guarantees without limits.

As stated that basically land registration was using a rights registration system, where every creation of a new right can cause legal changes as evidenced by a deed. That the thing registered was not the deed but to the rights.

Thus, the unity of land law and land administration applies in all countries that are promulgated by containing several principles, namely:

1. Emphasizing the principle of inviolability of land rights, unless regulated in laws and regulations.
2. Interpersonal land ownership disputes are no longer possible, because interpersonal land ownership disputes with the state since the first law were not possible.
3. Rights are regulated by Malaysia customary law, customary proverbs that apply.
4. The conditions for the transfer and registration of rights are broader than the old laws and regulations.
5. Certain types of agricultural businesses are encouraged to be developed.

In the 1965 National Land Law, the ownership of land rights cannot be contested after being registered either by an individual or by a legal entity. Control over land by a person who already has a permit can control the land for a certain period of time and for that period as well as by his control.

In the Torrens system, the most complete and inviolable evidence of the holder of land rights was the land certificate. Changes in the land book are not allowed, unless the land title certificate was obtained through forgery and fraud. With that, there is compensation for land certificates that are given through insurance funds.

JURIDICAL COMPARISON ON CERTAINTY OF LAND RIGHTS OWNERSHIP CERTIFICATE HOLDERS

Comparison of the two countries on a legal object, namely in legal certainty. Regarding this matter, the comparison process can be interpreted as an activity to identify similarities and differences between two or more certain phenomena.

The issued certificate which becomes strong evidence of the evidence in physical data and legal data is listed in the measurement letter and the relevant data. This means that as long as it is proven from juridical data and physical data, it can be accepted correctly and can carry out legal actions in everyday life, both in evidence in court cases.

The *Rechtverwerking* provisions emphasize that the publication registration system is negative (by not guaranteeing the truth of the data presented as evidence), but tends to use a negative publication system with a positive tendency. It can be interpreted that although the state does not guarantee the truth of the data used as evidence, the certificate issued is strong evidence as long as there is no court decision that makes a different decision.

In the case of *Gibbs V Messer* (1891) A.C. 248, clarifies that the main objectives of the torrent system are:

1. The principles of this charter emphasize the purpose of the buyer by paying attention to registration as a source of information that is directly bound by the law. This principle considers the information contained in the register and not on the background or history of the land.
2. The validity of registration grants undisputed rights and privileges to the person whose name has been registered. The purpose of this is to make the registration document a convincing proof of ownership.

In the torrent system, so that people truly believe in the data, the state guarantees all the correctness of the data presented in the register process. As a matter of fact, the torrent system adheres to 3 things in principle, namely:

1. The principle of mirror, means that the general register reflects the legal interest related to the land.
2. Curtain principle, means that if there is a situation where a person is not listed on the public register, the government cannot force the person whose name is listed on the list, or in other words, there is no need to trace the previous owner.
3. Principle Insurance, meaning that the information presented in the general list is guaranteed by the state.

When looking at the torrent system adopted by the Malaysian state, every legal certainty would be held and borne by the state as a guarantor for the data that has been recorded if all the truths in the registration have been matched. Basically, Law must have certainty and justice. The code of ethics and justice contains a reasonable order in the code of ethics. Therefore, it is fair and carried out with certainty in the law in the course of its own legal function.

Meanwhile, the advantages of the negative publication system are the rights holders who are protected from other parties who have rights to the land, the existence of an investigation of the history of the land before the issuance of the certificate, and the absence of a time limit for the actual land owner to sue other parties. While the weakness is the lack of certainty on the validity of the certificate because it could be sued at any time and can even be canceled at any time, the role of land registration officials who are passive in supporting the direction of causation and the truth of the data listed is also the working mechanism of officials is less transparent so that it was less understood by the general public.

It could be understood that the certificate that appears has two types of evidence, namely strong and absolute. When comparing the strength of proof after land registration from the two countries, namely Malaysia and Indonesia, the proof system in Malaysia adheres to a positive system which is considered more absolute, while the proof system in Indonesia, which has a negative system, contains only strong evidence.

CONCLUSION

1. Owners of land who have obtained certificates of title to land, that the owners are subject to registration owned by their respective countries. In Malaysia, it is subject to the State Land Kanun 1965, while in Indonesia it is subject to the Basic Agrarian Law Number 5 of 1960, one of the things that distinguishes the legal force in the two countries is the land publication process. In Indonesia, it applies a positive publication system which has a negative system, while in Malaysia it uses a torrent system. Both systems have their own way of providing certainty in their own way. The comparison that the certainty of rights to certificates of property rights is guaranteed by the publication system was adopted by Malaysia compared to the publication system in Indonesia. Because Malaysia, the name of the owner listed in the certificate for certainty of rights and cannot be contested. Whereas in Indonesia in Government Regulation No. 24/1997 Article 32, certificates have strong power as evidence but are not absolute.
2. In Indonesia, a certificate of rights is used as evidence of a right whose name is recorded in a certificate that is protected by rights in terms of legal certainty in terms of certainty as long as it cannot be contested. However, if someone sues, the name listed can still remain the same depending on what is being demanded. It can be seen from the publication system adopted by Indonesia which still does not guarantee the certainty of the rights of the subjects listed in the certificate.

3. Meanwhile in Malaysia, based on the system applied, the name certificate that has been listed cannot be denied or challenged again. Because in countries that implement this Torrens system, the state guarantees the correctness of the data included. Thus, the certainty of the rights obtained by the land owner is strong enough to be categorized as absolute unless there is a land dispute.

SUGGESTION

1. In order to bring about the administrative sustainability of the targeted land, all communities and institutions must be willing to cooperate and be more responsive so that when land ownership occurs and there is also a transfer, land registration can be carried out. Each of these processes is expected to produce land certificates or certificates as evidence of the rights that can be owned so that land registration can achieve the goal with benefits that can be realized for land rights holders.
- 2.
3. Each publication system that is applied each has its own advantages that can be implemented. So that the head of applying for land registration in the Indonesian state can still be repeated over the arrangement so that it can create a policy in order to strengthen the power of the certificate to be more absolute, such as the legal power of the certificate in the state of Malaysia.
4. In Indonesia, it is expecting to establish a special land court. Because until now land disputes are often resolved based on problems that follow civil, criminal, or administrative matters. Because with the system adopted by Indonesia in land registration, it is more likely that disputes will occur and this can have a long tail which makes it reduce legal trust. Therefore, by strengthening and establishing a special court for land, it can dissolve any land problems by reducing the effects of prolonged disputes and finally achieving the objectives of the Basic Agrarian Law.

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