



The Implementation of Good Faith Principles in the Transfer and Registration of Land Rights Based on Basic Agrarian Law

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Good faith is a fundamental principle in conducting an agreement. The good faith principle in Indonesia based on The Basic Agrarian Law (BAL) must be applied, especially in the transfer and registration of land rights. The implementation of good faith principles in the Agrarian field, through Land Deed Official (PPAT), is yet to be achieved. This study is an empirical study; the type of data in this study is primary and secondary data. Interviews and literature studies collected data. The technique of analysing data is interactive analysis (interactive models of analysis). The discussion of the research indicates that great faith was used as the principle of Agrarian Law. Still, in the registration of land rights applied throughout Indonesia, the monitoring is regulated by the government through the Minister of Agrarian and Spatial Planning, or National Land Agency. It means that the principle of Good Faith in the transfer and registration of land rights based on BAL is not implemented. Implementation of the good faith principle in the Agrarian Agreement (UUPA) will only be achieved through the Amendment of Land reform, PPAT Law, and issuing a law regarding the Land Rights Transfer of Land Ownership.

Keywords: *Good Faith Principle, the Basic Agrarian Law.*

Introduction

Legal conflicts regarding land rights are often found throughout Indonesia, some with lengthy disputes, especially in cases of overlapping ownership of the land. This is due to the importance of land and the scarcity of land for the people. Hence, it often causes disputes among the people – either people versus people, people versus legal entities, as well as people versus government such as land rights conflicts between the government of Indonesia and the people; the invoking



of land rights, occupation of state lands, and plantation land conflicts (Istislam et al., 2014), occupation of the land ex-business rights (Permadi, 2016), etc.

The problem of land distribution begins with the issue of justice. If the distribution of land is fair, there will be no conflicts regarding land rights among the people or people versus the government.

Land rights problems between people and legal entities or government, in this case, the Ministry of Agrarian and National Land Agency, may be due to the lack of clarity of land rights transfer regulation within the Agrarian Law, thus the good faith principle cannot be implemented. Even though this Agrarian Law has stipulated various types of land ownership and land rights, its implementation is yet to take an interest in the community.

In Indonesia, the right to land has got the primary regulation that refers to Basic Agrarian Law (BAL) (Lucas and Warren, 2003). However, since the land is also part of the law of property and material law in general, the investigation of land rights is not simply enough by referring to BAL, but also considering the law of things as part of the property law in general, so that it is very important to implement good faith principles in transfer and registration of land rights based on BAL.

The government must implement the Good Faith Principle as a universal principle in the Ministry of Agrarian and Spatial Planning, and the National Planning Agency, to achieve good governance in each legal relationship, including The Agrarian Law in Indonesia.

Good faith is not only during the implementation of the agreement but also during the making or the signing of an agreement (Suharmoko, 2004). The strong influence of good faith is not only in the implementation of the contract but also during the making of the contract (Solikha, 2015; Khairandi, 2004). Similarly, Sulistyarini et al. (2018), claims that good faith within the contract is only an interpretation that suits the principle of fairness and appropriateness. Nevertheless, each person has the freedom to determine their intention, and this is not against human rights. It is in line with McKendrick (2018) that this principle is an individual right. In the same vein, Laila (2016) also wrote that good faith in the implementation of the agreement ultimately means that the agreement should be carried out based on fairness and appropriateness.

The signing of an agreement related to the registration of land rights for the community to prevent the disputes on the ownership of that particular land can be carried out in front of a Land Deed Official (PPAT).

The PPAT is acknowledged as the authorised officer to implement the function of the Public Officer that is to produce a legal deed, specific for land rights transfer and forfeiture of land rights and land ownership.



The Land Deed Official (PPAT) is regulated within the government regulation PP No. 37, the Year 1998, which has been amended by Government Regulation PP No. 24 Year 2016. However, considering the PPAT existence is not referring to the observed legal system, and the element of the Public Officers are yet fulfilled (Yudara, 2001). Due to the PPAT Law as enacted, judicially the PPAT is not a public officer as stipulated within the Article 1868 of the KUH Perdata, but in practice, the PPAT exists and is accepted by the legal community.

The implementation of the Good Faith Principle can be in the form of Agrarian agreement when the land-reform is carried out through the establishment of the Land Rights Transfer Law, or Land Ownership and enactment of the PPAT Law.

Methods

This research is an empirical study and descriptive. The purpose of this research is to identify the laws of the community to know other symptoms, to accurately describe the properties of an individual, circumstance, particular symptom or group, or to determine the spread of a symptom, and whether there is a relationship between a symptom and the other symptoms in the community (Sukanto, 1986). The type of data in this study is primary and secondary data. Primary data was collected by interview and secondary data obtained through literature study, electronic media, internet, laws regulation, and the other literature. The technique of analysing data is interactive analysis (interactive models of analysis).

Results and Discussion

Definition of Law

The definition of law is a rule of conduct developed by the government or society over a specific territory. Law follows certain practices and customs to deal with crime, business, social relationships, property, finance, etc. The Law is controlled and enforced by the controlling authority (Anonymous, 2019a)

Law is a system of rules that are created and enforced through social or governmental institutions to regulate conduct (Anonymous, 2020a).

According to the Indonesian Encyclopedia, the law is a set of rules, regulations, rules of regulation, both written and unwritten, which determine or regulate relationships among the members of society (Machmudin, 2010).

A more procedural-implementation law definition was put forward by Utrecht, cited by Sudarsono (2007). A law is a collection of regulations containing the commands and prohibitions taking care of the order of a society, and therefore, it should be obeyed by that

community. Padmo Wahyono tends to see law as a tool by limiting the law as a tool or means to organise the state life or the order, and it is as a means to hold social welfare at the same time (Limbong, 2012). Furthermore, Limbong (2012) declared: a law is the whole of the principles and rules governing human life in society, and it also includes the institutions and processes bringing the regulations into effect in reality.

Based on the explanation above, it can be concluded that the law was made to control human behaviour while protecting human interests both as individual creatures and as social beings living in a society. Lawmaking must lead to the creation of common good and the realisation of justice in society.

Definition of Agrarian Law

Agrarian Laws (meaning 'land') were laws among the Romans regulating the division of the public lands, or *ager publicus*. In its broader definition, it can also refer to the agricultural laws relating to peasants and husbandmen, or the general farming class of people of any society (Anonymous, 2019b).

According to The Law Dictionary, what are Agrarian Laws?. Law for the distribution among the people, by public authority, of the lands constituting the public domain, usually territory conquered from an enemy (Anonymous, 2020b). According to Soedikno Mertokusumo cited from Santoso (2009), agrarian law is the entire legal principles, both written and unwritten governing agrarian pursuits. Furthermore, Santoso (2009) stated, written legal norms are agrarian law in the form of legal and other written regulations made by the state. In contrast, unwritten legal rules are agrarian law in the way of traditional agrarian law made by local indigenous people, in which the concerned indigenous peoples maintain its growth, development, and validity.

Agrarian law is the law governing the ownership, use, and distribution of rural land. Agrarian laws also refer to the set of legal regulations aiming at dividing the vast tracts of land to more evenly control ownership (Supriadi, 2010). The various law groups consist of:

- a. Land Law, regulating the control rights over the land, in which it means all of the surfaces of the earth.
- b. Water Law, regulating the control rights over the water.
- c. Mining Law, regulating the control rights over the mining materials intended by the Basic Mining Law.
- d. Fisheries Law, regulating the control rights over the natural resources contained in the water.
- e. The Law on the Control of Energy and Elements in Space, regulating the control rights over the power and elements in space, as intended by Article 48 of the Basic Regulations on Agrarian Principles.



Land Law in Indonesia

The National Law, whose main provisions are contained in the UUPA, is a single Indonesian Law on Land, which is arranged in a system based on the nature of Customary Law (the philosophy of Customary Law) concerning the legal relationship between specific Customary Law community and its communal land. The conception of Customary Law contains the legal concepts according to custom regarding land, which is then raised into the design of National Land Law (Sihombing, 2018).

Harsono (2008), namely communal religious and formulated as a conception that allows the mastery of common parts of the land as a gift of the Almighty God for individual citizens with private land rights as well as an element of togetherness. The principle of national land ownership reflects the goal, and the principle of preserving agricultural land reflects the means or the tool for achieving that goal. Accordingly, Perangin (1991) stated that Land Law is the entire legal regulation, both written and unwritten regulating control rights over the land, which constitute legal institutions and concrete legal relationships.

Law No.5 of 1960 on the Basic Regulation of Agrarian Principles was enacted in the State Gazette of the Republic of Indonesia year 1960 number 104 on September 24, 1960. The UUPA, containing the necessary provisions of the Land Law is aimed at eliminating previously occurred dualisms in the field of Land Law and is consciously intended to hold the unity of law by the wishes of the people as a united nation and following the interests of the economy (Sihombing, 2009).

Land Law is the entire legal provisions, both written and unwritten, all of which have the same regulatory objects, which is the control rights over the land as legal institutions and as a concrete legal relationship, both in public and private aspects, which can be arranged and systematically studied until the whole becomes a unity which is a system (Santoso, 2009).

The object of land law is the control rights over the land. The right to control land is a right that contains a series of authorities, obligations, and or prohibitions for the holders of their rights to do something concerning the claimed land. The object of land law is the right to control land, which is divided into rights to land as a legal institution and as a concrete legal relationship (Perangin, 1991). As a legal institution, the power of ownership of land has not been associated with the land and certain legal bodies or entities as subjects or holders of their rights. As a concrete legal relationship, the right to control this land has been linked to certain rights as objects and certain legal bodies or entities as subjects or holders of their rights (Limbong, 2012).

Control-Rights Hierarchy of land in National Land Law are the rights of the Indonesian people, the right to control from the state, the customary rights of customary law communities, and



individual rights. The rights of the Indonesian people are the highest control rights and are the source of other control rights.

Regarding the right to control the state, the concept is normatively regulated in Article 2 of the Basic Regulations on Agrarian Principles. This right does not give an authority to control physically but solely as a public authority. The state is given the power to regulate land and other elements of natural resources constituting national wealth.

The Implementation of the Good Faith Principle Based on Basic Agrarian Law By The Government

The principle of good faith is contained in Article 1338 paragraph (3) of the Civil Code, which reads, "All agreement made by the law apply as laws for those who make them." This agreement is irrevocable other than by agreement between the two parties, or for reasons determined by law. Approval must be carried out in good faith. "So when viewed from the provisions of the article, good faith is a principle that must be fulfilled by the parties to agree in the agreement" (Subekti, 2006; Widaningsih, 2019). According to the classical theory of contract law, the principle of good faith can be applied in situations where the agreement has fulfilled specific conditions (Gordley, 2013). The application of good faith principles must be considered, especially when conducting pre-agreements or negotiations because good faith is only recognised when the agreement has fulfilled the requirements for the validity of the contract or after the negotiations have been carried out.

The good faith principle by the government can be implemented in the form of proper monitoring by the Ministry of Agrarian and Spatial Planning, especially the Chairmen of the National Land Agency at local levels.

The Agrarian Law (UUPA) is a formal law containing the principles of agrarian law, whereas its implementing rules regulate various ways to implement these principles (Sutedi, 2014). The UUPA article Number 26 paragraph (1), UU Number 25 the Year 2009, and UU Number 30 the Year 2014, were issued to increase the quality of governance and support the implementation of democratic reformation, prevent the abuse of power, and ensure accountability of the government. In addition, to provide legal protection for people who suit the Good Governance Principle (Suparjo, 2016).

Regarding the implementation of Article 19 (1) and Article 26 (1) of the UUPA, there is no conflict of interest during the implementation of the monitoring of the land rights transfer and registration, which are appropriately monitored. Monitoring can be defined as a process to ensure the objectives of the organisation are achieved (Handoko, 2003).



Within the implementation of land rights transfer and registration, article 26 (1) UUPA stated that Purchase and Selling, exchange, grant, and gifts are made by the will and other actions intended to transfer the ownership and its **monitoring are** regulated by Government Regulation. This rule is a means of control for the weak or poor citizens toward other citizens who may be more compelling economically. It needs to be noted that within the Article 26 (1) of this UUPA, the words **“its monitoring...”** are stated.

In this article, the monitoring theory used by the government (the Ministry of Agrarian and Spatial Planning) towards the implementation of land rights transfer and registration is carried out by the head of the National Land Agency at various levels for *RechtKadaster*. Even though many scholars try to develop this theory of monitoring, monitoring is still implemented within the level of theory to analyse the performance of the National Land Agency at the city/district level in a province.

One of the essential components of the public service is external monitoring by the public, considering that the public is the receiving end of the service. When the community is aware of their rights and obligations in monitoring public service delivery, inputs and feedback from the community will make the implementing agency of public service try to improve their public service delivery.

The public is expected to actively participate in improving the public service delivery as they are now aware of their rights and obligations, as well as that they are critical toward the monitoring of the civil service that they receive. All controls and monitoring, both internally and externally in public service, should complement each other and cooperate for better service delivery. Quick response and follow-up actions from the deliverer of the civil service on complaints and feedback from the community should be implemented when internal monitoring is yet optimised. The parliaments at all levels should be quick in actions to perform their external monitoring functions.

In a legal action of legal rights transfer and registration of land rights, where a reason for the land is transferred from one party to another, it should be made in front of the PPAT – including the formal agreement, which is stipulated by certain formalities and the existence of the authentic certificate signed in the presence of PPAT.

The legal basis for the existence of the PPAT is Government Regulation Number 37 the Year 1997 (Amended in Government Regulation Number 24 the Year 2016) about the Land Deed Officer.



The Implementation of the Good Faith Principle Based on Basic Agrarian Law By a Land Deed Official (PPAT)

The Land Deed Official (PPAT), as the public officer, shall abide by the principles of accountability to form legal certainty, as the government-appointed PPAT. In this case, it is the National Land Agency, with duties and authorities to serve the community's needs for the transfer of land rights deed (Purwaningsih, 2015). But UUPA does not regulate absolutely about PPAT, for example, in article 19 paragraph (1) of UUPA (Harsono, 2005). Article 19, rule Number 10, the year 1961 concerning land registration does not mention PPAT and does not regulate. Article 19 only mentions "officials,"

PPAT is a function that performs a part of the government's authority, particularly in doing an authentic deed in the scope of land. All authority carried out by PPAT as the public officer shall be accounted for. Therefore, PPAT in carrying out their function shall abide by the principle of accountability to form good governance (Maisela and Karjoko, 2018). The concept of accountability started from thinking that every action shall be accounted for by the person or the institution that gives authority to perform a program.

The main task of the PPAT is to implement a part of the Registration of Land Rights by making a land deed as proof of the implementation of specific legal actions regarding individual land units' land rights, which serve as the basis for land registration due to that legal action.

Thus, the authority of the PPAT to create authentic deed is only a part of their job. As stipulated in Government Regulation Number 24 the Year 2016, or based on the reality where land or land rights of housing are not applied where the parties come forward (the buyer or the seller), nor where the holder of land rights reside nor where the land rights recipient reside.

Disregard the regulation on the PPAT, which has covered several laws, such as mentioned previously, and the legal certainty is yet provided.

The level of authority of the PPAT to make an authentic deed is limited by the extent of the land deed working area. The working area of PPAT stipulated in article 12 (1) of the Government Regulation number 24 the year 2016 for the amendment of government Regulation number 37 the year 1998, which reads "The working area of PPAT is one provincial province." However, in practice, it is still challenging to implement.

Several amendments of Government Regulation Number 38 the Year 1998 are as follows;

- a. Government Regulation Number 24 the Year 2016 on PPAT, which stipulates the conditions that should be obeyed by the PPAT in the implementation of their jobs.
- b. Government Regulation Number Year of 2016, is a regulation on the position stated by the Article No 7 (3) of the PP No. 24 of 1997 on the Registration of the Land Rights, which

mentioned: "the Regulation on the Position of the PPAT as stipulated in verse (1) is regulated separately with a Government Regulation".

- c. Government Regulation Number 24 the Year 2016 on the Regulation of the Head of The National Land Agency of the Republic of Indonesia,
- d. Government Regulation Number 1 the Year 2006 on Jobs Regulation of the Officer Authorised to Make Land Deed (PPAT), which was later amended by the Regulation of the head of the National Land Agency of the Republic of Indonesia No. 23 the Year 2009.
- e. Government Regulation Number 24 the Year 2016 stated, "the working area of the PPAT covers a province."

Although the arrangement of PPAT is regulated in several statutory regulations as mentioned above, in reality, it has not yet created legal certainty, for example: before the law of the chairman of National Land Agency number 8 the Year 2012, about the change of regulation of the Minister of Agrarian/Chairman of National Land Agency number 3 the Year 1997 on Government Regulation number 24 the Year 1997 about Land Registration. One of the problems in the practice of PPAT is "should PPAT use **the Blank Deed** that has been specified by the government?"

Article 1 of the State Land Agency (BPN) with Regulation Number 1 the Year 2006 (Amended in the regulation of BPN number 23 the Year 2009) (Amended in the law of BPN number 23 the Year 2009), stated that "Blank Deed of PPAT is made and published by BPN." This offered more legal certainty than BPN Regulation Number 8 the Year 2012 (PPAT allowed to do a Blank Deed with their own, so the risks are high of counterfeiting and misuse by other parties because of no serial number and no barcode).

There are similarities in the Blank Deed which is printed by BPN and printed by PPAT based on Perkaban Number 08 the Year 2012, such as:

- a. Contains **information** about the day, date/year of the transaction
- b. Contains **PPAT Identity**
- c. Refer to the provisions of law and articles concerning the transfer of rights and obligations of the parties.

The differences of the Blank Deed, which is printed by BPN and printed by PPAT based on Perkaban Number 08 the Year 2012 as listed in Table 1.

Table 1. The differences of the Blank Deed which is printed by BPN and printed by PPAT

BLANK DEED PRINTED	
BPN	PPAT
There is a serial number of the deeds for easy tracking, in case of counterfeiting and disputes	No serial number of the deeds
Formal form, written completed , just fill in with typewriter manually as needed	Printed by PPAT use white paper
No need to write down: NIB, SPPT PBB serial number, land boundaries, and land use	Need to write down: NIB, SPPT PBB serial number, land use, and the boundaries of the land in the right transitional object
All deeds have been provided in 4 copies	In 2 copies , one (1) copy for PPAT, and another one (1) copy for the concerned, as a duplicate
DO NOT include the name and working area of PPAT on the lower left side of each sheet of the deeds	Include the name and working area of PPAT on the lower left side of each sheet of the deeds

Based on table 1, Indonesian Legislative Assembly (DPR) must be issuing a law regarding the Land Rights Transfer of Land Ownership, and PPAT Law by eliminating the differences between Blank Deep printed by BPN and Blank Deep printed by PPAT, and issuing new Perkaban that will replace Perkaban Number 08 the year 2012. The Barcode and the identity of the respective PPAT must minimise the risk of counterfeiting and misuse of the Authentic Act by others.

Conclusion

The implementation of good faith principles based on BAL can be achieved by realising the principle of good faith in Article 33, paragraph (3) of the 1945 Constitution of the Republic of Indonesia. If referring to the Practical Value related to Article 33, paragraph (3) of the 1945 Constitution of Republic of Indonesia and Article 19, paragraph (1) of the Basic Regulations on Agrarian Principles, referring to Article 1965 of the Civil Code that the Good Commitment Principle in the Transition of Land Rights in Indonesia has not yet been realised.

The good faith was used as the principle of Indonesian Agrarian Law (UUPA). Still, in the registration of land rights applied throughout Indonesia, the monitoring is regulated by the government throughout the Minister of Agrarian and Spatial Planning or National Land Agency, and it means that the principle of Good Faith on UUPA does not implement. Implementation of good faith principles based on BAL and UUPA will be achieved through



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the Amendment of Land reform, PPAT Law, and issuing a law regarding the Land Rights Transfer of Land Ownership.



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