

# Legal Political Model of Land Title Protection to Realize People's Welfare

Rainoer

Doctoral Students of Law, University of Sebelas Maret Surakarta, Indonesia.

Adi Sulistiyono

Promoter, University of Sebelas Maret Surakarta, Indonesia.

IGK Ayu Rachmi

Co Promoter, University of Sebelas Maret Surakarta, Indonesia.

## ABSTRACT

As a gift of God Almighty, land is a vital element for the survival and livelihood of the Indonesian nation of all time whose aim is to achieve the greatest prosperity/welfare of the people, as contained in the legislation, land registration according to the provisions of PP (Government Regulation) Number 24 of 1997 adopts a negative publicity (*negative system*) that contains positive elements. In essence, the presence of Agrarian Law (UUPA) is intended to realize peoples' welfare as contained in the welfare state legal concept that becomes national ambitions and goals, as mandated in the 1945 Constitution. This negative publicity system contains a weakness in the fulfillment of legal purpose, i.e. the rule of law itself. Legal certainty obtained is still relative.

The Dissertation aims to know and analyze: (1) why a legal politic of land has not been able to provide a certainty and protection of land title to the public at large; (2) how to develop a legal political model of land title protection through an ideal registration system in order to realize people welfare. This research used non-doctrinal and doctrinal method. While, the data resources of research used primary and secondary data. This article is intended to determine the validity of the legal politics of land in legal protection aspect of land title for the wider community through the registration system according to the legislation in force. From juridical side, the main purpose of land registration is to create legal certainty and ensure the protection of the law. Broadly speaking, this study aims to: first, to determine the factors causing the occurrence of legal uncertainty in the system of land title registration that implies on the land title certificate is not secured. Factors that cause to have not held a registration system in the context of a certainty and protection of land title to the public among other, include: a legal politic in land is unclear, a weak legal certainty, a weak bureaucracy in implementing land registration and the culture factor that has not put forward morale integrity. The politics of national agrarian law should refer to the wider public interest based on the principles of welfare and justice, as prescribed by the 1945 Constitution.

For this purpose, a legal development must be undertaken that essentially leading to a renewal of the provisions of the existing law and considered obsolete, and the creation of the provisions of the new law needed to meet the demand of development that occurs in the society, as a consequence, changes lead to positive publicity system represents a major step-forward (*futuristic*) for Indonesia, by establishing a legal political model in protecting land title through an ideal registration system with reference to a positive publicity system, in which a law of land forms an embodiment of law enforcement and legal certainty in the land sector. It needs to improve UUPA that better puts forward public needs and in a harmony with other Sectoral Law, public empowerment in the registration process of land title certification. Institutional support of BPN (National Land Agency) with excellent services and other related government apparatus in order to grow and develop in the framework of a legal protection and certainty on the land title. BPN entities are only assigned to determine the present of administrative defect when a land registration were under certification process. Annulment remains to become the authority of a juridical body and in this context the existence of a special Court is required to address the disputes in land title.

**Keywords:** Legal Politics, Rights Protection, People's Welfare.

## A. BACKGROUND

Law No. 5 of 1960 concerning Agrarian (UUPA)<sup>1</sup> states that the land is a gift of God Almighty intended for the Indonesian nation.<sup>2</sup> The gift of God Almighty refers to aspects of human<sup>1</sup> well-being in the life and

<sup>1</sup> UUPA is the basic rules governing the authorization, ownership, allocation, use and control of land use aimed at the implementation of the management and utilization of land for the greater prosperity of the people. One of the aspects required for this purpose is pertaining land title certainty, which becomes the vital basis in the legal certainty framework of land title.

<sup>2</sup> So significance of land for human, in the preamble of UUPA begins with the statement" in the Republic of Indonesia that

livelihoods.<sup>2</sup> UUPA adheres the presence of Divinity dimension. Furthermore, it is affirmed in Article I (2), which reads: "The whole earth, water and space, including the natural resources contained therein, within the territory of the Republic of Indonesia, as a gift of God Almighty is the earth, water and outer space of the Indonesian nation and serves as a national asset."<sup>3</sup> Human relationship with the land that is essential of *magis-religijs* forms a relationship of possession and use of land in order to gain benefit for the interests of life and livelihoods, both for the public interest as a social being and individual interest.<sup>4</sup>

In the progress, the land becomes increasingly vital, because as a natural resource that can be considered its limited existence to accommodate various human activities that continue to grow, so that potential results in dispute of interest concerning the use and possession.<sup>5</sup> To ensure the use and possession of land, the government seeks to provide legal certainty guarantee of land title, by implementing land registration in all parts of Indonesia. Through UUPA the basic provisions of land registration have been established, as follows:<sup>6</sup> "In order to ensure legal certainty, the Government has implemented land registration throughout the territory of the Republic of Indonesia, according to the provisions laid down by the government regulation." Article 3 of Government Regulation Number 24 of 1997 concerning Land Registration (hereinafter referred to as PP Number 24 of 1997) confirms that the registration of land in Indonesia aims to:<sup>7</sup>

- a. To provide legal certainty and legal protection to rights holders on a plot of land;
- b. To provide information to the parties concerned; and
- c. Orderly implementation of land administration.

It can be seen that the process of land registration is to maintain data<sup>8</sup> and juridical data.<sup>9</sup> Land registration according to the provisions of PP Number 24 of 1997 adopts a negative publicity (*negative system*) containing positive elements, because of generating a title certificate that applies as a strong item of evidentiary. Explanation PP Number 24 of 1997 states that the registration of land where the implementation is instructed by UUPA, does not adopt a positive publicity system (positive system) in which the validity of the data presented is fully guaranteed. In the negative system, the government does not fully guarantee the validity of the data presented, however, it cannot mean the land registration system adopted is a purely negative system. It appears from the provision in Article 19 paragraph (2) c UUPA stating that a title certificate issued as referred to in Article 23, 32, dan 38 UUPA applies as a strong item of evidentiary. Negative publicity system adopted by PP Number 24 of 1997 contains a weakness in the fulfillment of the purpose of law, i.e. the law certainty itself. Legal certainty obtained is still relative. Strictly speaking, a land registration system is currently not able to guarantee a legal certainty on a land effectively.<sup>10</sup>

In association with the Indonesian land registration system that adopts a negative system, Boedi Harsono,

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the composition of people's live, including the economy, particularly still patterned agrarian, earth with its content was a gift of God",

<sup>1</sup> Indonesia adopts the welfare state, it is explicitly stated in the Preamble of the 1945 Constitution. People's welfare is the real *indicator*, Notion of the *welfare state* requires the state's role in various aspects of life.

<sup>2</sup> Land is a natural resource that cannot be refurbished and given the importance of land for human life. Land is a very important factor of production because of land the human welfare comes.

<sup>3</sup> Please refer to the consideration of UUPA at Considering section, letter a.

<sup>4</sup> Muchtar Wahid, *Interprets Legal Certainty of a Land Title, An Analysis with Normative and Sociological Approach, Republika, Jakarta, 2008, p. 2*

<sup>5</sup> In general, land disputes arising in Indonesia can be classified into 4 (four) classification of issue, i.e. relating to: recognition of land possession; transfer of right over land; right encumbrance, and occupation of former private land. University of Gadjah Mada, *Reform of Government and Regional Autonomy, an Executive Summary*, Center for Population and Policy Studies, Yogyakarta, 2002, p.15.

<sup>6</sup> Refer to: Article 19 paragraph (1) UUPA

<sup>7</sup> Refer to: Article 3 PP Number 24 of 1997 concerning Land Registration. In the explanation of the Article it is stated that legal certainty is the main purpose of holding the registration of land as instructed by Article 19 of the UUPA. Subsequently, it is explained that land registration will be implemented in a simple way and easy to understand and performed by the people concerned.

<sup>8</sup> Physical data as referred to in the provision of Article 1 of the Regulation of Agrarian State Minister / Head of National Land Agency Number 3 of 1997 stating that the physical data shall mean description of the location, boundary and size of the plots of land and flat units that are listed, including a description of any building or parts of buildings erected on it. From this definition, it is known that the focus of the objects is a plot of land and the flat unit, and the necessary description of the object is about the location, boundary, area and building erected on it.

<sup>9</sup> Juridical data shall mean any information of the legal status of land and flat units s that are listed, right holder and other party's right and other expenses charging them. To the parties who register their land will be given a document of a title certificate that serves as strong item of evidentiary. In PP Number 24 of 1997 only a certificate of land title is legally recognized as proof of a land right ownership that guarantees legal certainty and protected by law. Issuance of a certificate and given to the entitled, aims that that right holder can easily prove the ownership of the land.

<sup>10</sup> Compared to Muchtar Wahid, *Op. Cit*, p. 6.

questions the extent to which people can believe in the validity of the data presented, and the extent to which the law protects the interests of people who in good faith take legal actions regarding the registered rights, according to data presented or those specified in a land title certificate issued, if later it turns out the data are not valid.<sup>1</sup> In a positive system, land registration adopts the attitude that what has been registered will be guaranteed to reflect the actual situation, both of the right subject and right object. The government guarantees the validity of registered data and for this purpose the government has examined the truth and validity of each file that is proposed to be registered before being inserted into the lists of land. Thus the subject of rights which are registered as holders of land rights are legally valid rights holders and cannot be contested on whatsoever basis or reason. The person whose name is listed as a rights holder in the register, obtains what is called a *defeasible title* (Uncontested rights). With the completion of the registration on behalf of the assignee, the other person who is actually entitled to be loss of his rights, he cannot demand the cancellation of the legal act transferring title concerned to the buyer. In certain circumstance he can only sue for compensation to the State. To deal with the compensation claim, the State presents a special fund.

The fundamental weakness regarding a negative system is that land registration does not create rights that cannot be contested. As for determining the validity or not of a right and ownership is the validity of a legal act done, not the registration. Therefore, even it is already registered in the book of land a certificate has been issued still always faced the possibility of a registered right holder loses the right of land under their control since sued by the real entitled party.<sup>2</sup> Basically, the relationship between legal certainty of property rights to land<sup>3</sup> and legal protection can be concluded that the legal certainty is a means to obtain a legal protection.<sup>4</sup> According to Muchtar Wahid, a legal certainty includes elements of right certainty, certainty of subject and object. The births of certainty on those elements are closely related to the effectiveness of the implementation of the defense legal system in the society.

Maria Sumardjono said that legal certainty requires a certainty. Indonesian land law requires a certainty of who holds property rights or other rights of a land plot. In the reality, the certificate holder on land has not felt safe of his certainty of right, and even the doubts that often arises with the number of lawsuits demanding the cancellation of land titles through the courts.<sup>5</sup> Many problems in the agrarian sector cause a serious obstacle to the development process of the nation. Direction of a political policy that is impartial to the interest of the wider community is the causing of the problem arises in the agrarian sector. Efforts of improvement undertaken throughout the history of nation building have an estuary, which is to achieve social justice and social welfare.<sup>6</sup>

Rationale and political foundation of the national agrarian adopted by UUPA<sup>7</sup> is based on Article 33 paragraph (3) of the 1945 Constitution that the state should not act as an owner but as a ruler (*authority*)<sup>8</sup> to manage national wealth and natural resources. The power given to the state to provide an obligation to the state to regulate the ownership and determine its usefulness, until all land throughout the territory of the country can be utilized for the greatest prosperity of the people<sup>9</sup>

Issues on land would of course be the duty and responsibility of the government. The government must have the commitment and mechanism to address and resolve those issues.<sup>10</sup> Efforts to make improvements, both in the form of change or amendment to the provisions of UUPA have been under discussion since earlier. As a reinforcement of the commitment, the People's Consultative Assembly Decree Number IX/MPR/2001 has been stipulated concerning Agrarian Reform and Natural Resources Management<sup>11</sup>, and well the Presidential Decree

<sup>1</sup> Boedi Harsono, Indonesian Agrarian Law, A History of Law Establishment, Lsi And Its implementation, Djambatan, Jakarta, 2003, pp.81-82.

<sup>2</sup> Adrian Sutedi, *Transition of Land Rights and Registration*, Sinar Grafika, Jakarta, 2007, p. 54.

<sup>3</sup> Legal certainty that includes certainty of object, certainty of rights and certainty of subject forms a goal to obtain legal protection over the titled land ownership. Thus, a certified land title, gets justiciable protection against arbitrary action.

<sup>4</sup> Legal protection itself is an attempt by law, both *preventive* and *repressive*, in order that a certificate as proof of a strong right can obtain a legal protection.

<sup>5</sup> Maria S.W, Sumardjono, Land Policy: Between Regulation and Implementation, *Kompas*, Jakarta, 2001, p. 37,

<sup>21</sup> Fauzi N, et.al; *Land and Development*, Pustaka Sinar Harapan, Jakarta, 1982, p. 43,

<sup>7</sup> Boedi Harsono, *Op.Cit*, p. 56.

<sup>8</sup> Mochtar Kusumaatmadja, *Archipelago State Law Concept on Law of Sea Conference III*, Alumni, Bandung, 2003, p. 45

<sup>9</sup> *Ibid*, p. 67.

<sup>25</sup> Given the land is used or exploited for meeting the real needs, then the provisioning, designation, acquisition, management / use and maintenance needs to be regulated in order to ensure legal certainty in the acquisition and utilization and established legal protection for the people who manage state land, while maintaining sustainability, ability to support sustainable development activities.

<sup>11</sup> The decree mandates the Government to make restructuring related to laws and regulations or arrangement, control, ownership, use and exploitation of land that is comprehensively placed in the framework to build justice and public welfare in a sustainable manner, meaning that in implementing a policy of land management should be directed to the land for *justice, prosperity* of the people, social harmony by reducing / minimizing and removing disputes of conflict and

Number 34 of 2003 concerning National Policy in Land Sector. However, until now the legislation governing the further has not been available. This is closely related to the government's political will. It can be said that the legal certainty regarding land rights ownership through registration system adopted by PP Number 24 of 1997 still causes a juridical problem. Any legal uncertainty for the holder of the certificate.<sup>1</sup> This contrasts with a positive system that provides a full guarantee on the actual situation, both of the rights subject and the rights object rights. If there is a claim of right such as a compensation, the State is responsible for, and not the holder of the title certificate.

Registration system adopted by PP Number 24 of 1997 creates the conditions for the inconsistent between the objectives of the law (*das sollen*) to be achieved by registration with the implementation of law in the field (*das sein*)<sup>2</sup> The condition and the fact has impact to the development of law in Indonesia that fails to realize the ambitions (*recht idee*). In this dissertation research, subject matter that is further studied includes as follows:

1. Why the land law politics fails to provide certainty and protection of land rights to the wider community?
2. How to build a legal political model to protect land rights ownership through an ideal registration in order to realize the public welfare?

## B. RESEARCH METHOD

This research used non-doctrinal and doctrinal method. Doctrinal legal research means the type of research that the focus of study emphasizes on general principles of law and rules of law contained in various provisions of the applicable legislations and legal theories scattered in various literatures.<sup>3</sup> Non-doctrinal research views the law not only from the perspective of the legislation but views the law in its implementation and while it works, therefore this research requires primary data. Primary data obtained through interviews with the parties associated with the object of research, and observation and questionnaire. Information of legal data collected from the literature research then analyzed by qualitative normative analysis method.<sup>4</sup> The research results obtained from the field were analyzed with quantitative approach. The approach taken in this study using legislation approach because the approach in law rests on laws related to legal politics of land in the sector of land proprietary rights registration. Subsequently, a comparative approach to the implementation of land ownership lights registration of various countries done through literature searches, in order to obtain input associated with the formation of the ideal model of legal politics in land affairs. Approach in the research also using descriptive analytical, which aims to describe or explain the events and occurrences that exist at the present time. By method of collecting, compiling, interpreting the data which then being submitted by analyzing those data. Respondent selection technique is done in order to obtain and extract all kinds of information related to the research. To get in-depth information and to support the literature data expected to have become inputs to complete the study, needs to conduct the field research. Field data were obtained through interviews using a questionnaire instrument as an interview guideline (interview guide) to the source person. The author chose the source person deemed to know the issues to be studied in the research. Respondent was taken based on the adequacy of the information or the adequacy of the amount of data required.

## C. RESEARCH RESULTS DISCUSSION

### 1. Certainty and Protection of Land Certificate Ownership

Ensuring legal certainty is highly needed, especially for the weak economy players in order to avoid the possibility of annexation by other people who are stronger in economy both individual and private. From juridical and technical side, the main purpose of land registration is to create legal certainty and ensure the protection of the law. In fact, the legal certainty of land registration cannot be

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cases of land (*harmony*), and should open space or access and opportunity for future generations in *sustainability* in the Unitary State Republic of Indonesia.

<sup>1</sup> In practice the issuance of land certificates can still be questioned its effectiveness in providing legal certainty and legal protection, whether the certificate actually protects the rights (subject) or the lands (object) or only physical evidence of the certificate, as often happens when it were brought to court, it may be recognized formal certificate, but does not protect the subject and object,.

<sup>2</sup> In practice the process of land registration at BPN also still found the low quality of service. As a result, the negative *image* of public service of the public is no longer unstoppable, until the public service is identical with the complicated bureaucratic procedures, high cost and long time service processes. To create a public service implementation that is in accordance with the corridor of *good governance*, it is necessary to increase public confidence in public services performed by government agencies as providers of public services both at the central and regional level. To improve the quality of public services delivery, the government has enacted Law Number 25 of 2009 concerning Public Service. Law Number 25 of 2009 concerning Public Service as a frame or *umbrella act*, which houses all the rules and regulation of public services that point out that of all the legislation in force relating to public services must be in accordance with the provisions stipulated in Law Number 25 of 2009 concerning Public Service.

<sup>3</sup> Soerjono Soekarno dan Sri Mamuji, *Normative Legal Research - A Brief Overview*, Rajawali Pers, Jakarta, 1980, p. 14

<sup>4</sup> Maria S.W, Sumardjono, *Guideline of Preparing Research Proposal*, Fakultas Hukum Universitas Gadjah Mada, Yogyakarta, 1989, p. 23

enjoyed by the community. This means that in fact, it is still considered that no legal certainty of the existence of land registration in this country, because the certificate has not fully guaranteed a person's right to land. In the philosophical level of thinking (apart from the implementation practice) a land registration system in Indonesia occurs a setback, of "positive publicity system to negative system, which closes or complicates a way of solving problem about the absence of a guarantee to land law certainty. The biggest fault lies in the system itself that is not constructive. An irony of policy between expectation and obstruction of achieving the objectives of the registration of the land itself.

UUPA system adopts a negative publicity system (Article 19 of UUPA and the implementation rules of PP 10/1961 concerning Land Registration revoked by PP 24/1997), which is basically confirms that a certificate as just one of the proofs of land rights, as a strong proof, but not absolute one. This may have implication that the State is not solely responsible for the data presented, as a consequence the certificate does not guarantee a legal certainty. The reason of negative system application (not pure) because "the implementation of a positive system requires a lot of time, effort and cost, whereas with a negative system the implementation can be performed in a shorter time," it is clear that the guarantee of land registration legal certainty is the liability of the State in this regard the Government as administrator (Article 19 of UUPA), and the right to sue of the people regarding any guarantee of the data and information presented relating to land registration. he guarantee of a legal certainty can not be interpreted half, but should be in full.

Various problems with the registration of land until now the land registration is still not optimal. There are several problems that cause it, among other, include:

- 1) Lack of skilled personnel in the measurement as a result of too far regeneration of the measuring personnel, lack of attention to the importance of using a registration map, while mapping by air is often done periodically.
- 2) Various cases in double certificate often emerges as a result of registered plots of land have not been mapped in the registration map, especially in the region bordering with other regions, development regions, while in the regions have not had an adequate registration map.
- 3) Lack of available map on a large scale, which is one important means in carrying out land registration causing the registered plots of land cannot be mapped.
- 4) PP Number 24 of 1997 mandated that the implementation of land registration should be simple, safe, and affordable. However, until now the implementation regulation of PP Number 24 of 1997 i.e. Regulation of the Agrarian Minister / Head of National Land Agency (PMNA/Ka. BPN) Number 3 of 1997 has not reflected the simple nature, because the procedure adopted in the process of land registration is very long and increasingly expensive with the issuance of PP 64/2002 concerning rates and types of services in the land sector.
- 5) The small number of land parcels registered. Until now, the registered plot of land only reaches 30% of the entire plots of land.
- 6) Many differences in interpretation of the implementing regulation causing the implementation of land registration become complicated. Each makes its own policy in the service, not integrated, thus causing the service is so slow, expensive, and not transparent.
- 7) Until now there has been no unified interpretation regarding the definition of indigenous lands and state lands, causing a variety of problems in the field.

On the other hand, several bottlenecks in land registration are the expansion of the province, district, municipality, sub-district, and village or merger of village. This situation is certainly not beneficial in the implementation of land registration. Other problems to be faced in the future in terms of land registration are:

- 1) Still any reluctance to disclose information due to lack of understanding of government apparatuses on the principles of *good governance*.
- 2) Registration of land which has not been optimal.
- 3) Lack of understanding, discipline and consistency of BPN apparatuses in service delivery of land registration
- 4) Effective monitoring system has not been realized.

Land law policy still puts citizens as the object of the law so that the land registration system tends to be discriminatory<sup>1</sup> The responsibility of a government official should not only to the

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<sup>1</sup> In the social science literature, the bureaucracy is generally viewed as an actor who merely implements policies that have been decided elsewhere; in Mohtar Mas'oe'd, *Politics, Bureaucracy and Development*, Pustaka Pelajar, Yogyakarta, 2003, p. 68, while according to Roger Seruton, *A Dictionary of Political Thought*, Harper and Row Publishers, New York, 1982, bureaucracy interpreted in the meaning as -"Rule by administrative offices in a bureaucracy actual power is vested in those, who are from the legal point of view, administrative mediares between sovereign and subjects that gives

organization he / she manages or to his / her superiors but also to the citizens who are directly or indirectly affected to the policy taken.<sup>1</sup> If a government official takes a policy, he / she does not only determine the target groups that will benefit from that policy but also the groups that will implement those decisions in the technical operations. Various factors of non-performance on land registration that protects the rights of people referred to above are exacerbated by the emergence of new land registration problems such as: <sup>2</sup> fake certificates, real or fake certificates, double certificates, and the certificate blocking by the bank. This situation shows the legal uncertainty for public lands. Therefore, it should be the concern of government to immediately socialize what and how the land registration and the purpose of the registration, if left unchecked will encourage more people are not convinced on the evidence of the right itself for not being able to protect the rights of the public land. Moreover, for some people, the land certificate is still considered to only be used for certain purposes so that the public are indifference to the registration of the land in this Country.

On the occurrence of double certificate is also due to the weakness of publication system used in Indonesia, i.e. a negative publicity system containing positive elements as mentioned in Article 19 paragraph (2) letter c of UUPA stating that providing title certificate that applies as a strong item of evidentiary. With the use of the words "strong", it can be seen that the publicity system used is a negative publicity system, because if using the positive publicity system, then the right word is absolute, so that the certificates are only powerful evidence and not constitute an absolute proof. A power of certificate evidentiary is also regulated in Article 32 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration, stating that: "While it has not been proven to the contrary, physical data and juridical data contained in the certificate should be accepted as the valid data, both in the law-making day-to-day operations or in the dispute in court, as long as the data is in accordance with what is stated in the measurement certificate and land book concerned and that the people cannot claim the titled land on behalf of another person or legal entity, if for 5 (five) years since the issuance of the certificate the people concerned do not file a lawsuit in court, while the land is acquired by the people or other legal entity in good faith and physically tangible controlled by him/her or by another people or legal entities who get approval from him/her". From the formulation of the articles mentioned above it can be concluded that as long as the data can not be proven otherwise physical and juridical data listed should be accepted as the valid data during the data corresponding to the data contained in the land book and measurement certificate found in the Land Office, the certificate of land right can still be revoked or canceled if there is proof otherwise stating the invalidity of the certificate, either for the court decision with a permanent legal force or for any administrative law defect upon the issuance.

One causative factor on the emergence of the most dominant bureaucracy disease according to the author is due to the low morality of the apparatus or more determined by the low morale of the apparatus. The case of corruption, for example, is generally not conducted due to low knowledge, but rather committed by a high education apparatus. The low morality of employee shows low ethical norms or unused as a reference in thinking, acting and behaving in the implementation of tasks in their area of work. Morality is an encouragement from and to undertake a system of values or ethics, so that the higher the level of people morality the stronger motivation to implement ethical values in their daily lives, as well. Conversely, the lower morality level, the motivation of implementing ethical values is low too. Bureaucratic disease mentioned above cannot be separated with the occurrence of weakening social values, general interests and social responsibility are set aside by pursuing status as measured by ownership of property gets a prominent place in the personal ethics of most people. Second, lack of transparency and accountability in public integrity system. Major bureaucratic disease destroys all aspects of life in the state, nation and society, and encourages the occurrence of any bad behavior is a disease of corruption in all its forms.

One of the main factors and actors that play a role in the realization of good governance (*clean government*) and good governance is the bureaucracy.<sup>3</sup> In such vital position and role in the policy

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*them de facto control over major political transformation" More concise Pfifner and Presthus interpret the essence of the bureaucracy meaning as a system of authority, human, office, with the method (The system of authority, men, of offices and methods that government uses to carry out its Programs may be called bureaucracy). Peter in his composed book entitled "the Politics of Bureaucracy" has interpreted the meaning of the bureaucracy in the context of his studies as: "Organization with a pyramid structure of authority, which utilize the enforcement of universal and impersonal rules to maintain that structure of of authority, and which emphasize the non discretionary aspects of administration. "Gay Peter, The Politics of Bureaucracy: A Comparative Perspective, Longman, New York, 1984. p. 3.*

<sup>32</sup> Wahyudi Kumorotomo, *Ethics of Public Administration*, Raja Grafindo Persada, Jakarta, 2009, p. 374.

<sup>2</sup> Refer to: *Soni Harsono*, Principles of land Sector Policy in National Development, Analysis, of CSIS, Year XX Number 2, March - April 1991.

<sup>3</sup> Bureaucracy service reforms that tend to have bad image so far continues to be discourse both at public level and the

management and public services, the bureaucracy will highly determine efficiency and quality of service public to the community, as well as the efficiency and effectiveness of governance and development. Research to measure the service performance level of the service unit that implements registration process and certification of land rights ownership conducted at BPN DKI Jakarta. Research was conducted by measuring the Community Satisfaction Index of the Customer with reference to the Minister of Administrative and Bureaucratic Reform (Menpan) Decree Number KEP/25/M.PAN/2/2004 concerning General Guidelines for Preparing Satisfaction Index of Government Agency Service Units, i.e. to the elements of people's satisfaction index over 14 (fourteen) minimal elements that must be available for measurement basis as referred to above.

From the completed data processing, it is known that a Service Quality at BPN DKI Jakarta is categorized as "B" (Good) with 67.51 score on 62.51 to 81.25 scale. However, if we restrict the service element only on element number 7 (speed of service), element number 8 (justice to get service), element number 11 (certainty of cost), and element number 12 (certainty of the schedule), then each of those elements is still relatively weak. Speed of service gets score 3.55, justice in service gets 4.97, certainty of cost gets 4.14, and certainty of schedule gets score 4.02. Special note that should be paid attention is about the Speed service element with a score of 3.55, this is very far with a score of others.

Bureaucracy<sup>1</sup> that occurs at the National Land Agency (BPN) tends to be circling in the arrangement of land certification is a complex and impractical bureaucracy, and the behavior of a number of actors who take advantage. Such conditions have a negative impact because people become apathetic in the arrangement of land certification at Land Office. Therefore, efforts need to be undertaken in order to address the issues concerning public services by looking for new formulas that can help people to meet their needs. This condition affects the implementation of LARASITA (Layanan Rakyat untuk Sertifikasi Tanah) (People's Service for Land Certification)<sup>2</sup> applied throughout the National Land Office.<sup>3</sup>

Another problem viewed from the aspect of legal culture, shows the legal culture of society is still weak, including government officials. Constraints that occur in the implementation of transitional registration of property rights to land due to people are reluctant to process of obtaining a land certificate for the public perception that services provided by land office is so difficult and time consuming and the cost is relatively expensive for people with a weak class in economy. People still think that girik (title of land ownership), petok (land ownership certificate issued by the village master) of tax or Letter C proposed in the process of land registration and certification is as a proof of proprietary rights to land. Whereas girik, petok of tax or Letter C filed is not items of evidence of the land ownership. On the other hand, the person who works at BPN agency still always takes a chance, which sometimes acts as broker in the handling of certificates. For them, if there are people who want to arrange the certificate is treated as additional income or livelihood, in such culture so that if there are people coming to the land office then many employees in the office itself struggle to win arrangement and move to exploit the situation. This fact is exacerbated by the people who frequent arrange the certificate do not know where they must step forward when arriving at the land office. Although the information is open to the public (as public services), which, according to the land office it has been posted on the announcement board describing

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environment of the government itself. At the public level, for example, a very strong demand emerges that the government must be consistent to implement bureaucracy reforms by providing excellent service to the public. While at the level of government itself, it must be also recognized that on a legal formal basis, the public services reforms continue to receive special attention. A number of policies issued in order that excellent service delivery must be immediately realized. Such expectation at least, is in line with what becomes a phenomenon in the practical domain, almost all public officials, makes the issue of excellent service as an icon of leadership.

<sup>35</sup> W.J.S. Poerwadarminta: defines the bureaucracy into three terminologies, those are: government performed by paid employees who are not elected by the people; regime of government that is extremely dominated by civil servants; and method of work or arrangement of the work that is completely slow, follows the rules and convoluted. Refer to: *Big Dictionary of Bahasa Indonesia*, Balai Pustaka, Jakarta, 1993, p. 144.

<sup>36</sup> LARASITA provides Land Services Pattern that is actively conducted by BPN RI for the community in land arrangement in order to provide justice for the people, speed up the process, increase area coverage and to ensure the land arrangement without intermediary by means of making BPN RI services closer directly to the public through Mobile Land Office (*mobile office*). LARASITA was established and developed to make real mandate of Article 33 paragraph (3) of the 1945 Constitution, the Agrarian Law and the entire legislation in the land sector. LARASITA development departs from the will and motivation to bring the National Land Agency closer with the community and to change the paradigm of implementing the basic tasks and functions BPN from waiting or passive to active or proactive.

<sup>37</sup> Based on the Regulation of the National Land Agency Head of the Republic of Indonesia Number 18 of 2009 concerning LARASITA of National Land Agency of the Republic of Indonesia, then LARASITA was officially applied throughout the National Land Agency offices. LARASITA is a new program from the National Land Agency Office that provides legal certainty in the process and makes it easier for people who want to make land certification, and to cut land Title arrangement chain and to minimize the arrangement costs.

measures to pass when arranging the land certificate (the mechanism of certificate handling is announced), but in reality it's just easier in writing but still people are not able to carry out the permanent procedures themselves. Moreover, people who come to the land office is indeed poor of knowledge in handling their title certificates. There cannot be found a guide that will help, with friendly greetings and selfless. Finally, a State trusts and assigns the land certification with people whose moral is expected for the progress of the nation, but in fact will hinder the progress of development. Thus, what is mentioned above that the land certificate handling is a simple, low cost and short time will not be achieved. Many certificates of land found in public life are pledged to be proof of ownership that can be activated at any time in the economic traffic is also not realized. People should become closer to the certificate and capable of seeking to develop themselves through capital land certificate capital they own. Moreover, sometimes the banking institutions are still picking to provide loan. Finally, support of certificates to the real economy is not realized.

Legal awareness of society to carry out the registration of land now is still very low. Low awareness of land registration shows concern for liability as landowners for maintaining, securing title proof certificates and prevents disruptions and to maintain boundary marker of the public plots of land is still inadequacy, event has no concern to register their rights From the lack of public awareness to register their land rights resulting in people who have plots of land do not know exactly layout/boundaries of all plots of land, especially those that have land far from their residence. In this case, they only entrust to certain people as their proxy to manage and keep the land. Therefore, the level of a certificate legal certainty as proof of a strong right, is not only determined by the fulfillment of a formal legal rules, but more important is the extent to which the application of the rules is correctly so that the substances of the law are met.<sup>1</sup>

## 2. Establish Legal Political Model of Land Title Protection to Realize the People's Welfare

The Indonesian Constitution set out in Article 33 of the 1945 Constitution of the Republic of Indonesia, in addition to adopt the concept (principle) of the people's sovereignty,<sup>2</sup> the sovereignty of Law<sup>3</sup>, the sovereignty of God<sup>4</sup>, also dealing with Human Rights, said so, because the existence of human rights precedes the law. That is, human rights as a fundamental and sacred right inherent in every human being throughout his/her life as a gift of God, then the human rights are formalized into a set of rules of available law. Thus, the law becomes a *condition sine qua non* in human rights enforcement.<sup>5</sup> In relation to the ambition (goals) of the Indonesian state, based on the Preamble text of the 1945 Constitution can be seen that the law political ambitions in the national legal system in principle have internal and external dimensions. Internal dimension refers to:

- 1) Protect the entire Indonesian nation and the entire homeland of Indonesia;
- 2) Promote the general welfare;
- 3) Educate the life of a nation;

As for external dimension, implement world order based on freedom, lasting peace and social justice. These both dimensions underlie the Indonesian independence in a 1945 Constitution established by the principle of people sovereignty based on the values of Pancasila (Five basic ideologies of Indonesia).<sup>6</sup> This distinguishes as the hallmark of the Indonesian state ideology with other ideologies, both socialist/communist and liberal. Protection against the whole Indonesian nation and the entire homeland of Indonesia refers to the system of agrarian law, as stipulated in Article 33 paragraph (3) of the 1945 Constitution. The politics of national agrarian law adopted by UUPA intended that the state should not act as an owner but as a ruler (*authority*) to manage national wealth and natural resources.<sup>7</sup>

<sup>1</sup> Muchtar wahid, *Op.Cit*, p. 117.

<sup>2</sup> Sovereignty of the People mentioned in Article 1 (2) of the 1945, Constitution also mentioned in the fourth paragraph of the Preamble of the 1945 Constitution, "... the structure of the Republic of Indonesia under the sovereignty of the people ..."

<sup>3</sup> Legal sovereignty is mentioned in Article 1 (3) of the 1945 Constitution..

<sup>4</sup> The sovereignty of God is mentioned twice in the Preamble of the Constitution of 1945, first, on the third paragraph, "*In the grace of God Almighty...*", and the fourth paragraph, "... the structure of the Republic of Indonesia in the sovereignty of people by virtue of the God Almighty" and Article 29 paragraph (1) .....  
*of the 1945 Constitution that reads: "The state based upon God Almighty. "*

<sup>42</sup> A. Masyhur Effendi dan Taufani Sukmana Evandri, Human Rights in Juridical Dimensions/Dynamics, Social, Politics and the Process of Preparation/ Application of HUMAN RIGHTS RIGHT (Law of Human rights) in the Community, *Ghalia Indonesia, Bogor, 2010, p. 36.*

<sup>6</sup> Read; The fourth paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia.

<sup>7</sup> Based on the rights of State control as defined in Article 2 of UUPA and according to the provision of Article 4 in UUPA, which further specified in Article 16 paragraph (t) of UUPA, to individuals or legal entities are given some kind of land rights.



Land is the source of life, power, and prosperity. Due to the strategic position of such land, then in politics and land law of Indonesia, the state as an organization of people power at the highest level, controls the land to be used for the greatest prosperity of the people. State authority sourced in the right to control natural resources (SDA) by the State is public purely i.e., the authority to govern (regulatory authority) and not physically control the land and use the land as the authority of personal land title holder. In addition it also outlined that any right to the land must have a social function with an understanding that the land shall be used, and the use should not be detrimental to the interests of others.

Authority of the State's Rights are understood in the framework of relations between State and the earth, water and natural resources therein as a relations of control, not ownership relations like in Western Countries and in communist countries. State in this respect as the Ruler Agency at the highest level is authorized to regulate land use in a broad sense and to determine and govern the legal relations and legal actions with respect to the land. As an attorney, the State must be accountable to the public as a principal.

<sup>1</sup> With this, AP. Parlindungan cites it as people rights at State level.<sup>2</sup> The power given to the state to provide an obligation to the state to regulate the ownership and determine its usefulness, until all land throughout the territory of the country can be utilized for the greatest prosperity of the people. This provision confirms the existence of obligations to be executed in order to achieve people's prosperity.

Reviewing the above description shows the authority of State control to the land does not mean to possess, but intended to regulate and organize allocation, use, supply and maintenance of land, water and outer space and to determine, regulate legal relations of people and legal actions concerning land, water and outer space. In addition, the control principle, the principle of nationalism, the principle of non-discrimination, the principle of social function, the principle of modality, typical principle, the principle of publicity and the principle of specialty are used as a guideline by BPN which is a principle of authority in granting land rights. Providing land rights shall be conformed to the rights contained in UUPA and granted to people and other legal entities.

We know that legal politics of land title protection from time to time in the era of power/government since the Dutch colonial era to the reform era and the current administration still remains a complicated problem. Demand for carrying out agrarian reform ultimately has a source from the birth of MPRRI Decree Number IX of 2001 concerning Agrarian Reform and Natural Resources Management.<sup>3</sup> Normatively, Article 2 of MPR Decree Number IX/MPR/2001 concerning Agrarian Reform and Natural Resources Management states as follows: "Agrarian Reform shall include a continuous process with regard to the restructuring of control, ownership, use and exploitation of agrarian resources, carried out in order to achieve certainty and law protection and justice and prosperity for all Indonesian people".

From this understanding, it appears that agrarian reform is intended to restructure the acquisition and exploitation of agrarian resources to make it more just, sustainable, and to make people welfare in an effort to realize the welfare state because in the welfare state the country should give priority to the interests of the people (the public), active participate in social relationship so that the social welfare of all

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<sup>45</sup> Maria SW Sumardjono, *State's authority to Govern in the Concept of Land Control by the State, in a Position Inauguration Speech of a Professor at the Faculty of Law, UGM, February 14, 1998, Yogyakarta*. According to some leaders, this concept is influenced by an integrated State concept evolved at the time and supported mainly by Soekarno and Supomo. The unity between the people and the State in which the interests of individuals and groups are soluble in the interests of the State (identical with the concept of Rousseau regarding organic society) so there is no conflict of rights and interest of citizens and the State. Individuals are placed under the value of the community as a whole. Refer to Frans Magnis Suseno, 1993, *Philosophy as Critical Science*, Kanisius, Yogyakarta, pp. 94-96.

<sup>46</sup> AP. Parlindungan, *Comments on Agrarian Law*, Mandar Maju, Bandung, 1991, p. 40.

<sup>3</sup> In the MPRRI Decree contains the policy direction as follows:

1. Reviewing various laws and regulations relating to agrarian affairs in the interest of synchronizing the policies between sectors for the realization of legislation based on the principles of understanding agrarian and natural resources management.
2. Remapping of control, ownership, use and exploitation of land (*land reform*) equitable with regard to the people's land ownership.
3. Carrying out land data collection through inventory and registration of control, ownership, use and exploitation of land comprehensively and systematically within the framework of land reform implementation.
4. Resolving conflicts relating to agrarian resources arising out so far as well as to anticipate potential conflicts in the future to ensure the implementation of law enforcement based on the principle of land reform and natural resources management.
5. Strengthening institutions and authorities in order to assume the implementation of agrarian reform and resolving conflicts of natural resources that occur.
6. Using serious efforts in financing the implementation of agrarian reform and resolving conflicts of natural resources that occur.

people is maintained.

The MPRRI Decree referred to above provides important meaning for agrarian affairs regulations in Indonesia in the future, given that provision serves as:

- 1) Strategic policy direction in providing the administration in the agrarian sector so that there will be changes to the vision and mission contained in existing provisions of agrarian so far, in other words, through the MPRRI Decree a more humane legal politics of agrarian has been birthed.
- 2) The basis for the validity or legitimacy of agrarian law regulation in Indonesia, which means that the provisions of existing agrarian law must be sourced and in accordance with the substances contained in the MPR RI Decree.

Such decree mandates the Government to make arrangement associated with the legislation and the arrangement of control, ownership, use and exploitation of land that is comprehensively placed in the framework of building justice and public welfare in a sustainable manner, meaning that in executing a policy of land management should be directed to the land for justice, prosperity of people, by reducing/minimizing and removing conflict disputes and land cases (*social harmony*), and should open the space or access and opportunity to next generations in sustainability within the Republic of Indonesia. Goal to be achieved by the Agrarian Reform is the agrarian justice, i.e. a state: <sup>1</sup>

- 1) There is no significant concentration in control, ownership, use and exploitation of land and agrarian resources into living needs of many people;
- 2) Certainty of local community rights is guaranteed (including customary law communities) over control, ownership, use and exploitation of land and other natural resources;
- 3) Survival and progress of local community production system is secured (including customary law communities) that are a source of livelihood.

Current legal politics that has a negative system paradigm, has a positive tendency, still causes legal certainty security has not been created in land sector for the community. On the other hand, the unavailability of comprehensive and clear legislation. Therefore, the provision of legal certainty guarantee in the land sector requires a set of comprehensive and clear legislation and can be implemented consistently, as well as in the system of effective land registration administration.

Law acts to perform its function as a *tool of social engineering* or to perform social engineering, especially in the land sector. Therefore, a legal development is needed to improve land law system. <sup>2</sup> In order to make the law can play a role, it takes the role of the ruler/government, thus it becomes absolute on the role of ruler/government because the law is a norm (rule) that is silent and weak. Law has two sides that cannot be separated, first, contains the ideas and ambitions. Second, law is functioned (utilized) as a tool to achieve the ambitions of law. In order that land law can serve to perform its function as a *tool of social engineering*, and as a tool for achieving the ambitions of law, then the certainty aspek becomes the main pillar that must be realized. Indonesian law politics after independence is headed to the codification and unification of the law, leading to a national legal system, single and applicable for all citizens of Indonesia. Seeing the goal of the legal development mentioned above, it can be concluded that the law in this case is about to be placed as an integrative unity. This means that as a factor that can integrate diverse cultural background with the one process of the development of national identity. Apart from that also the process of the various political entity into a system of government where its authorities and powers of the government are recognized, the integration of citizens into the same political process and integration of society into organizations for specific activities.

The existence of the law is a means to provide legal certainty in creating social order itself. Agrarian Law, known as Law Number 5 of 1960, aims to provide legal certainty and to condition the legality order.

" "in all regions of Indonesia a 'recht-cadastre' lad registration is held. Meaning that aims to ensure legal certainty. In accordance with the goal that will provide legal certainty, then the registration is required for the right holders concerned. If not required, then the land registration will be held and obviously it requires a lot of manpower, tools and costs, it would have no meaning at all." <sup>3</sup>

<sup>1</sup> Noer Fauzi, Acting for Agrarian Reform: from Local Demand To Global Trend, Yogyakarta, Insist Press, 2003, see also Noer Fauzi, Quo Vadis of Agrarian Conflict Resolution in Indonesia? Transitional Justice Perspective, Paper presented at the Workshop on Land Dispute Resolution Policy, 4 February in Jakarta, in Ida Nurlinda, Principles of Agrarian Reform: Legal Perspective, Rajawali Pers, Jakarta, 2009, pp. 90-91

<sup>2</sup> Development of law contains a double meaning. *First*, it can be interpreted as an attempt to update the positive law itself so in accordance with the need to serve society in the advanced stage of its development, a definition which is usually referred to as the modernization of the law. *Second*, it could be interpreted as an attempt to function law in the development period, i.e. by way of participating to hold social change as required by a society that is under development. Refer to: Satjipto Rahardjo, *Law and Social Change*, Alumni, Bandung, 1983, p. 231.

<sup>3</sup> *ibid*, p. 40

In addition, the registration of land specified in Article 19 of UUPA is the target to hold the simplicity of the law. Land registration issues are further described in general explanation at point III of the last paragraph of Law Number 5 of 1960, which reads: "Concerning the rights that initially applies of this Law all will be converted into one of the new rights according to UUPA" Based on that, all the land both owned in the name of a person or Legal Entity, both customary proprietary or land rights according to the book II of the Civil Code are required to be converted to any of the rights to the land according to UUPA and registered so that unification and simplicity law in Indonesian land law is realized in accordance with the purpose of UUPA.<sup>1</sup> Even in Article 41 of Government Regulation Number 10 of 1961 and Article 63 of Government Regulation Number 24 of 1997 will provide penalties for late or failing to register, both land registration and registration of land rights recognized before the entry into force of the UUPA.

If searched deeper about the will of UUPA in providing legal certainty of person's right, then land registration activities, have been clearly stating that one of the land registration goals is to produce legal certainty. In other words, once a person's right to land is already registered then someone his name mentioned in the land book will be able to freely use, transfer or bind the land rights for him in accordance with the right content. The law protects the land from disruptions or objections of the other party on the existence of the person's right. Protection is not solely upon the person's name listed in the certificate, but also protects his land. In other words, the certainty includes the legal certainty of ownership, use and management. Surely this is upon all the authority of the implementation of land registration the State has performed. Consequently the State is also responsible in full for the issuance of certificates. So if there is a mistake on the issuance of certificates, both mistake of subject and of object itself of a negligent work. A State should be able to provide compensation to the most rightful owners, if it turns out his rights do not fall on him as the most rightful owner. He makes a request on true and fair terms so as acceptable for registration, and the certificates awarded upon him. It is based on the consequences of State responsibility on the laws created to regulate the implementation of land registration. A State should be able to pay for the losses, as it has been practiced in other countries that already perform the land registration using a positive system.

*For example, as enacted by the State of Singapore. In Article 21 Land Titles Act of Singapore it mentions among others that: "The Registrar shall deliver a duplicate or photographic copy of the folio of the land register to the person named therein as proprietor." In Article 25 it is stated that: "Every folio of the land register.... shall be received in all courts as evidence of the particulars therein set forth...and that the person named as proprietor therein...is...entitled to the estate or interest in the land therein specified and described." Subsequently in Article 35 of the Land Titles Act of Singapore states that "Except in the case fraud, no person dealing with a proprietor...is required or in any manner concerned to inquire or ascertain the circumstances in or the considerations for which the current proprietor is or was registered..."*

In Australia, the registration system adopted is the Torrens system. This system was introduced by Robert Torrens, first used in South Australia and enacted in 1858, which was then in its development adopted by various countries. Torrens System states that:

- 1) *Security of title*, truth and certainty of those rights, seen from the series of rights transition and provides guarantee to those who obtain it to a lawsuit.
- 2) Exclusion of delays and excessive financing. With the presence of such registration need not always be repeated from the beginning of each transfer of rights.
- 3) Simplification on transfer of rights.
- 4) Accuracy.

Registration in Indonesia also uses the Torrens system, but we just do not know where we imitate the system. There are several advantages of the Torrens system, those are:

- 1) Defining unexpected costs.
- 2) Negating the repeated examination.
- 3) Negating most land data recording.
- 4) Expressly stating the legal basis.
- 5) Protecting against difficulties that are not listed in the certificate
- 6) Negating forgery.
- 7) Continuing to maintain the system, due to system maintenance is charged to those who benefit from the system.
- 8) Negating the tax right base.

<sup>1</sup> Harsono Budi, *UUPA Section One, First Volume*, Penerbit Djambatan, Jakarta, 2000, p. 21.

9) Guaranteed by the state indefinitely.

A land registration system in Indonesia should be based on a system of registration with a positive publicity system, can be proved by their characteristic or distinctive character of a land registration system i.e. with the present of a certificate as proof of land proprietary rights, with the entire sequence of procedures and mechanisms set out in laws and regulations on land registration system which is more dominant to a positive publicity system model. The use of positive publicity system is characterized by a system of registration of rights. The use rights registration system is necessary to a register or the land book as a form of storage and presentation of juridical data and rights certificate as a certificate of rights evidentiary. Registration or recording a person's name in the register as the holder of rights is that giving the position that the person becomes the holder of the rights over the land concerned, not a legal action of a right transfer done. (*Title by registration. The register is everything*)<sup>1</sup>

By using the positive publicity system then the consequence is the state guarantees the validity of the data presented. People may fully trust the data presented in the register that has been made and approved by the State. The person who will provide the land or the creditors that will accept land as collateral for credit need not hesitate to hold a legal action with the person whose name is listed in the register as the holder of rights. In a positive publicity system people who in good faith and with payment acquiring the rights of the person whose name is listed as a rights holder in the *register*. Obtains what is called a right which cannot be contested (*Indefeasible title*). In a positive publicity system the land rights registration fees charged to the government, then to impose this system it needs a substantial amount of funds that must be expended by the government. In this system there is an increase in *rechtsverwerking* institution as a means of resolving disputes over land rights registration.<sup>2</sup> The form of settlement through the *rechtsverwerking* institution done through the efforts of administrative objections, means the existence and position of such institution must be in the body of the land office and not as a supervisor. However, if desired to handle the dispute settlement authority arising thereof is the court of appeal as court of first instance.

The form of settlement through the *rechtsverwerking* institution done through the efforts of administrative objections, with the consequences of the existence and position of such institution should be outside the land office organ as the reasonable position of the personnel consideration body both in region in each province as well as in Jakarta. Appointment and increase in *rechtsverwerking* institution into a positive legal norm in the publication system is in line with the purpose of registration of land rights, i.e. individual to achieve legal certainty and certainty of the rights. Key feature of a positive system that land registration guarantees perfectly that the name registered in the land book is indisputable, although he is not the rightful owner of the land. According to the legal political model, the legal relationship between the rights of the people whose name are registered in the land book with the prior party assigning the rights is disconnected since such rights are registered. The advantage of this positive system is<sup>3</sup>

- 1) The certainty of land book;
- 2) Active role of the land title transfer officer;
- 3) Working mechanism in the issuance of land titles is easily understood by the layman.

Law political model using this positive system, provides an absolute assurance on the land book, although it turns out that the certificate book holder is not the real owner, therefore third party with a good faith acting under that evidence gets an absolute guarantee even if it turns out that any information listed in the land certificate is not true. Meanwhile, the weakness in the system is positive:

- 1) An active role of a land title transfer officer will take a long time;
- 2) The real owner who is entitled to the land will be loss of his rights because of the certainty of the land book itself.
- 3) The authority of the court is placed in administrative authority.

Provision in a positive publicity system explains that people who in good faith and with payment (*the purchaser in good faith and for value*) acquires the rights of the person whose name is listed as a rights holder in the *register*. A state in this system, provides a legal guarantee of an absolute rights to

<sup>52</sup> *Title by registration. The register is everything* namely that the land rights of a person is obtained after those rights are registered and listed in the land book, the legal certainty of rights registration is acquired so that the person is absolutely the person entitled as owner of the land,

<sup>53</sup> *Rechtsverwerking* institution is a new breakthrough in the civil procedural law in the district court or administrative court (PTUN) regarded as a special exception in dealing with cases in land sector that cannot be generalized to the system of civil evidence on other material.

<sup>54</sup> *Bachtiar Effendi, Land Registration in Indonesia and the Implementing Regulation, Penerbit Alumni, Bandung, 1993, p. 32*

land. Legal guarantee to which remains applicable even with a few exceptions to the data contained in the register, and in which case the evidence in the register continues to have absolute evidentiary power. Upon completion of the registration in the name of the assignee, the actual rights holders become loss of his rights. He cannot demand the cancellation of the legal action that transfers the e to the purchaser. Errors or inaccurate data of land causing damage to the rights holder on the system (positive publicity system), under certain circumstance he can only sue for compensation to the state. To deal with the compensation claim, a special fund is available. Rearrangement of the structure and policies of land in terms of control, possession, use and exploitation of agrarian resources need to be done by a serious government's political commitment to provide clear direction and basic in a framework of agrarian reform on a equitable, democratic and sustainable manner. This is because so many and complex problems that arise in the land sector, if not managed properly.<sup>1</sup>

Legal certainty and legal protection of the certificate must be realized properly by the government. Therefore, the level of a certificate legal certainty as proof of a strong right, is not only determined by the fulfillment of a formal legal rules, but more important is the extent to which the application of the rules is correctly so that the substances of the law are met. Basically, the relationship between legal certainty of property rights to land and legal protection can be concluded that the legal certainty is a means to obtain a legal protection. Legal certainty of land ownership data will be achieved if land registration has been made, for the purpose of land registration is to provide legal certainty and legal protection to holder of land rights. Both certainty about the subject (what rights, who are the owners, whether or not the charge on it) and certainty regarding the object, which is location, boundaries, and area width and the presence/absence of the building/plant thereon. Legal certainty that includes certainty of object, certainty of rights and certainty of subject forms a goal to obtain legal protection over the titled land ownership. Thus, a certified land title, gets *justiciable* protection against arbitrary action. Legal protection itself is an attempt by law, both *preventive* and *repressive*, in order that a certificate as proof of a strong right can obtain a legal protection.

With a land certificate, the certainty with respect to the type of land rights, a subject of rights, and the rights object to be real in principle. Therefore, compared to other written item of evidence, the certificate is a strong right proof containing legal certainty. An owner will get the perfection of his rights, because of the following regards:

- 1) A sense of security in holding land rights (*security*);
- 2) Understand properly what and how to expect from such registration (simplified);
- 3) The present of accurate guarantee of the system performed (*accuracy*);
- 4) Easy to implement (*expedition*);
- 5) With affordable costs by all people who wish to register land (cheapness), and affordability in the future may be realized mainly on the price of land later. (suitable).<sup>2</sup>

To achieve a good land registration system, only exists when a series of activities were already undertaken to collect, inventory and monitoring all traffic from the issuance of the land rights certificate. This activity will be recorded in the public register or often called as a land book, which is carried out by the government in this case the competent authority is the National Land Agency. Records of land registration will be continuously maintained at the Land Office. Likewise, physical information of the plot of land will be preserved in the form of a land book. So that once the land title certificates (proof of rights) are granted to the beneficiary, then all activities of the land for the benefit of owners are actually guaranteed by law. Even if there will be a transfer of rights will be clearly recorded in the land book, and this record is maintained for the sake of the land on the position of the person entitled thereof. Throughout the contents of/nature of the right can be pledged or transferred, then there is no one who does not respect when the *right to use* and *right of disposal* is indeed granted by the type of right itself. As a strong evidence the certificate has the following benefits:<sup>3</sup>

- 1) Ensuring legal certainty because it can protect the owner of the certificate against interference of others and avoiding the disputes with other parties
- 2) Facilitating business to obtain credit with titled land as collateral.
- 3) With the measuring letter in the certificate the land area is already definite, so for the determination of land and building tax (PBB) will be fairer.

To the state land, according to the author it should be set as the legal certainty, while to the lands derived from customary rights shall apply rights certainty. For the purpose of registration on the

<sup>55</sup> Maria Sumardjono, S.W Land Policies: Between Regulation and Implementation. *Kompas*, Jakarta, 2006, p. 45.

<sup>56</sup> S. Rowton Simpson, Land & Registration, Cambridge, University, 1976 ; 260 in A.P, Perlindungan, *Pendaftar: Lands in Indonesia* Mandar Maju, Bandung, 2004, p. 10.

<sup>57</sup> Maria S.W, Sumardjono, *Puspita Summary of Various Agrarian Law Issues*, Andi Offset, Yogyakarta, 1982, p. 26.

conversion of customary rights, bearing in mind the customary land tenure system which does not adopt written evidence, the accurate search of land ownership history highly requires skills and prudence of land apparatuses. While for the registration of new rights, in addition to the research of a mastery process, and the need of balance for the compliance of terms for entitlements, especially regarding the status of land, allocation/use, the subject of rights and higher interests including the public interest. Rights to the specified land, both through affirmation conversion, recognition of rights or granting of property rights, subsequently registered and recorded in the land book containing physical and juridical data and the subject of rights, inputted and then displayed in the BPN website to be accessible by the public at large.

In a review of State Administrative Law, a certificate is the written document issued or published by the government (agency or officer of the State Administrative) to be used as proof of rights and means of verification issued in the framework of implementing land registration. When the certificate were said as a formal document in a land title letter of evidence, it means that a person or a legal entity that holds the land certificate shows that they have a land rights over a particular plot of land.<sup>1</sup> As we know that in the concept of civil law proprietary Rights over land is essential legal relationship recognized to the existence, uphold, and should not be contested by anyone. Proprietary rights are a source of life and life for its owners, therefore people who have rights legally should be protected by the state.<sup>2</sup>

Property rights are a right that has the highest level of ownership relationship compared to other proprietary rights. The relationship between the land and the owners causes the rights and obligations as well as authority over the land owned, in wider definition Lisa Whitehouse said that "property is basic to the social welfare, people seek it, nations war it, and no one can do without it".<sup>3</sup> The property rights of the land is inherent to the owners as long as they do not waive their rights (transfer of rights). Likewise, when examined, the thoughts of John Locke regarding property rights saying that:<sup>4</sup> *Ownership of property is a natural right and that the purpose of Government is to protect and preserve natural property right*<sup>5</sup> Property rights are human rights that must be honored and the necessity for the state to protect, preserve and maintain the property rights of its citizens. Doctrine and theory of this property rights which then enters into the Constitution forms the human rights that gets legal protection, as stated in Article 28 H and 28 G, Amendment to the 1945 Constitution. Implementation of legal protection guarantee to the proprietary rights associated with the land by the State and then translated into the UUPA.<sup>6</sup>

In association with the above respects, as a juridical consequence, it then set forth that to the land of rights derived from old rights (customary) by law the amendment of law is made based on the principle of State recognition of the land proprietary rights of the people land because of the law are converted as new rights and types of land rights created by the UUPA. Such State recognition raises the model of juridical character land title in a "declarative" nature (*declaration*). In addition to the model of State recognition to the land rights of the people, the State accommodates the land rights arising from the status of the lands outside the land of rights occupied by people (State lands). The land rights are issued based on the actions of the government in the form of "stipulation" or "decision" of the right leading to juridical character model of a "constitutive" certificate (*Konstitutief*).<sup>7</sup>

<sup>58</sup> Boedi Harsono, *Some analysis about agrarian law, section 3*, Era study Club, Jakarta, 1980, p. 1,

<sup>2</sup> L.B. Curzon, *LandLaw, Seventh edition, Pearson Education Ltd, Great Britain, 1999, p. 8-9. said that* Property is the highest right a man have to any thing; a right over a determinate thing, either a tract of land or chattel; an exclusive right to control an economic good; an aggregate of rights guaranteed and protected by the government; everything which is the subject of ownership; a social institution whereby people regulate the acquisition and use of the resources of our environment according to a system of roles; a concept that refers to the rights, obligations, privileges and restrictions that govern the relations of men with respect to things of value.

<sup>3</sup> Jesse Dukemenier, *Property*, Gilbert Law Summaries, 1991-1992, p. i.

<sup>4</sup> Hari Chand, *Modern Jurisprudence*, International Law Book series, Kuala Lumpur, 1994, p. 261.

<sup>5</sup> John Locke "Second Treatise on Government", 1689, dikutip oleh Rock Deborah, *Property Law Human Rights*, First Published, Blackstone Press Limited Aldine Place, London, 2001, p. 3.

<sup>6</sup> Arrangement of proprietary rights of land including in Administrative law is a body of law created by administrative agencies in the form rules, regulations, orders and decisions to carry out regulatory powers and duties of such agencies. Henry Campbell Black, *Black's Law Dictionary*, Sixth Edition, St. Paul, Minn, West Publishing Co, 1993, p. 29.

<sup>7</sup> Some people translating the terms "*beschikking*" as "decision" or "stipulation" as well as with citation "Tata Usaha Negara (State Administration)" some other people use "Administrasi Negara". According Kuncoro Purboproanto, the terms "*Beschikking*" (Dutch) or "*Acte administrative*" (France), or "*verwaltungsakt*" (Germany). Refer to: Kuncoro Purbopratoto, *Some Notes on the law of state Administration law and government law*, Alumni, Bandung, 1978, p. 45. But the terms *Beschikking* according to Utrecht and Sjachran Basah, is more accurately translated as "Stipulation", as said in various definitions of stipulation raised by experts and after comparing and assessing it, the author is of the opinion that the stipulation is a written decision of State administration, which holds a legal consequence in carrying out the government (in the narrow sense of the word). Refer to: Sjachran Basah, *Existence and Benchmark of Judicial*

In the legal doctrine it is mentioned that as a declarative stipulation or decision is a stipulation or decision determining the binding of a legal relationship that in fact has indeed been there before. From law side by holding on this evidence it is a juridical basis to be used to legalize the assets to be issued the certificate of proof as well as an item of proprietary evidence to land rights. First, the juridical instrument or item of proprietary evidence which is referred to as "new rights" to the land must be evidenced by "the Government Stipulation" issued by the competent authorities if those rights derived from the State land or land management rights. Concrete manifestation of the government stipulation is the Decree of Providing the proprietary rights over land (Certificate of Property Rights, the Certificate of Building Rights on Land, etc.); and/or Second, an authentic deed of the Land Deed Official (PPAT) under the provisions of the law, including evidence of new rights proprietary, where such authentic deed contains the provision of those rights by holders of property rights to the assignee concerned if about the building rights on land and the right to use on the the title land. (Article 23 PP Number 24 of 1997), Third, other written juridical instruments referred to as rights over "old" land (Article 24 PP Number 24 of 1997), which is recognized the existence thereto by the law as written evidence of the land rights ownership.

Subsequently, juridical instruments concerning the existence of the proprietary evidence is governed in detail in the Regulations the Agrarian State Minister (PMNA) / Head of National Land Agency (KBPN) Number 3 of 1997. In Article 24 of PP Number 24 of 1997 and Article 60 of PMNA/KBPN Number 3 years 1997, along with the explanation of the Article mentioned old proprietary evidences i.e. *grosse/copy of eigendom deed*, certificate of property rights evidence issued under the regulation of swapraja (self-government), the letter property rights evidence issued under the regulations of the Minister of Agrarian Number 9 of 1959, a decree of providing property rights from the competent authorities both before and since the entry into force of the UUPA, which is not accompanied by an obligation to register the rights granted, but it has complied with all the obligations referred to therein, petok D/girik, pipil, ketitir, and verponding Indonesia before the entry into force of PP Number 10 of 1961, the deed of rights transfer privately made and affixed by the testimony evidence from the master of Customs/village/urban village passed before the entry into force of this government regulation, accompanied by the right base to be transferred, deed of transfer made by PPAT whose land has not been accounted for along the right base to be transferred, waqf deed of pledge/waqf letter of pledge made before or since the implementation of PP Number 28 of 1977, accompanied by the right base of the waqf is given, minutes of auction, the designation letter of purchasing parcel of replacement land taken by the government, a certificate land history that has been made by the head of PBB (Land and Building Tax) accompanied by the right base to be transferred, others form of written items of evidentiary by whatever name also as referred to in Article II, VI, and VII of the conversion provisions. This rights proprietary evidence in principle is a representation of the State recognition on the proprietary rights owned by the citizens of Indonesia. Given the present of the State recognition, the State should be responsible for the validity of the property rights certificate ownership.

Certificate is an evidence of rights, as it has seemed proper functioning, that the certificates are useful as "evidence". Evidence stating that this land has been administered by the State. With the administration and then followed by providing the evidence to the person who administers it. Evidence or certificate is the property of a person as stated in writing in the certificate. Thus, for landowners the certificate is a strong basis in terms of property rights evidentiary, reasons of being issued by the legitimate and authorized agency by law. The law protects the holder of the certificate and stronger when the holder name is same as the name mentioned in the certificate. So if the holder name has not been included on the certificate, then a title transfer should be made to the real holder in order to avoid from other party interference. In case of dispute, for example to the plot of land, then by who owns the land, the certificate in his hand should be used to prove that the land is owned by him. Certificate of land rights is a product of State Administration Officer (TUN) so that it applies the provisions of the State Administration Law. Upon the legal action someone as a TUN official can only perform acts that includes as an act against the law either by mistake (schuld) or due to negligence in implementing his legal obligations of the misconduct or negligence produces incorrect legal product of certificate, both an error on the law subject in the certificate and an error of law in the certificate.

Errors in the creation of the certificate can be of fraud element (bedrog), dejection (dwaling) and coercion (dwang), in the creation of physical and juridical data which is recorded in the land book. Thus, the generated certificate may result null and void. While for subjects who do so can be said to have committed an unlawful act (*onrechtmatigedaad*) When the deed is committed by the means of State bodies/National Land Agency, then such actions can be categorized as *onrechtmatige overheidsdaad* or abuse of authority from the State Administration officials. egal acts of Government/ National Land

Agency in conducting land registration and issuing a certificate as a legal act, to give rise to a new law state and giving birth to the rights and obligations of the new law against the specific legal person/subject, must meet requirements and should not contain error elements both pertaining the technical aspects of land registration and the juridical aspect.

Errors in this case result in void or can be canceled. Physical data errors and juridical data in the land registration will remove the element of legal certainty of land rights, so that the person entitled to the land will be damaged. Errors will also result in incorrect information at BPN as State organ which consequently also means creating non-orderly land administration. In case of the proprietary certificate is canceled by the court, such as the acquisition of the certificate proven using false data or including a double certificate, the government shall be responsible to indemnify the owner of the certificate which is canceled by the court. If the government does not guarantee the issuance of a certificate materially, certainly the function as the property protector is not realized. Non-realization of legal certainty, the certificate as securities will not be of high value, which will certainly not be used as an economic object attracted by the public.

One of the functions of law according to Sidharta is to provide protection for the benefit of mankind.<sup>1</sup> Meanwhile, Satjipto Rahardjo states that legal protection is to give shelter to the Human Rights (HAM), which is damaged by another person, and that protection is given to the public in order to enjoy all the rights granted by law.<sup>2</sup> Philipus M. Hadjon argues that legal protection is preventive and repressive. Conceptually, the legal protection provided to the people of Indonesia is the implementation of the principle of recognition and protection to the human dignity. This protection is not only assumed to the Government, but with the guarantor agencies and private institutions.<sup>3</sup> It is time for the private sector can be involved in strengthening the financial security if the government is less able to compensate profits or losses as a result of people's land expropriation. Thus, in an effort to strengthen the legal protection of the registered land there must be institutions in the insurance fund in land registration and land rights as an effort to strengthen the certainty guarantee (*title insurance*). For most people, the situation of registered land with unregistered is the same in the eyes of society. On the impact resulted in for the people of course can reduce the desire for their land registration. To support the acceleration of the existence of realizing legal certainty on this land, it needs to create insurance fund, so that truly certified land is not just the present of law guarantee but also a strong financial guarantee so it can protect the certified land (*title insurance*) by the community pursuant to their expectations. With the present of insurance fund institution it will benefit not only for the State alone but for rights holders and the exploitation in economic traffic in the society.

This insurance fund institution can be as guarantor against the cancellation of the rights by the Court. The State does not provide funds to indemnify the land where the rights thereto have been canceled by the Court, but the indemnification shall be the responsibility of the insurance fund institution. The present of insurance fund institution (*title insurance*) will provide legal certainty and the protection of ownership clearly to the public,

The communities do not feel the loss of the rights future security over the registered land. The State establishes insurance agencies on land or involves insurance agencies that are able to work together on the compensation payment of the registered land especially has a potential to be removed. Indemnity of land that has a potential to be removed (probably due to natural disasters, the development of the city, due to the decision of the court) should be indemnified not only on the land rights but including the economic value. Policy direction to be achieved in the provision of such guarantee is a loss of as follows:

- 1) The people holding the land rights should be protected legally and financially, in case of the land is removed due to natural disasters or taken over or canceled by the Court.
- 2) It is time to establish the Insurance fund institution to insure the land rights in order to secure indemnity for any land rights to be removed, taken over or canceled by the Court.
- 3) Stimulate landowners to register their land, for the present of indemnity guarantee of the insurers in case of their rights are removed.

Under the direction of the policy, the action plans to be implemented are:

- 1) Registration of land must be insured in order that the rights holders feel being protected even if the land rights are removed due to natural disasters, expropriation or due to the Court's Decision;
- 2) Involve the Insurance agency in carrying out land registration.

<sup>1</sup> Sidharta, Characteristics of Legal Reasoning in the Context of Indonesian Style, *CV Utomo, Bandung, 2006*, pp. 226-227.

<sup>2</sup> Satjipto Rahardjo, *Legal Studies*, PT. Citra Aditya Bakti, Bandung, 2000, p. 53.

<sup>67</sup> Philipus M.Hadjon, *Legal Protection for Indonesian People*, PT. Citra Aditya Bakti, Bandung, 1987, p. 2.



- 3) Obligate each applicant the land rights to pay the insurance fund, so there is a guarantee of compensation for owners when their lands are removed, taken over without their intention and/or canceled by the Court's decision. This payment is taken when the applicant paid BPHTB or revenue cash required from the beginning so as not to be perceived as additional expenses or separated special obligations.

Therefore, the proposed policy is that this intention can be exploited and even provides solutions for the acceleration of implementing land registration, then this policy must be made in explicit policy rules. Because of the technical nature it is already sufficient if such a policy is governed in the form of Government Regulation. Points that will be governed in the policies later are as follows:

- 1) Criteria of the removed land that is protected and being indemnified.
- 2) The function and purpose of protection;
- 3) Involvement land insurance
- 4) Obligations of rights holders to pay insurance premiums when registering their land rights;
- 5) Mechanism of payment and receipt of funds insured;
- 6) Calculation of premium cash with compensation obtained by the rights holder;
- 7) Strict sanctions for negligence of not registering the rights and not paying the registered land insurance.

According to the author, there are several indicators to see the level the government success in achieving the orderly administration of land, among others:

- 1) Who is known to own/control a plot of land, type of land use.
- 2) How is the legal relationship between the plot of land and that control the plot of land.
- 3) How wide an area of land owned by the person or legal entity.
- 4) Where is the location of the land that can be mapped based on the projected map system selected, so as to avoid overlap certificate.
- 5) Information mentioned in number, 1, 2, 3 and 4 above are managed in an adequate land information system.
- 6) Documents are stored orderly, organized and secured.
- 7) There is a permanent procedure that is simple, fast but its accuracy is assured. One of the very effective methods to realize land administration is to organize systematic land registration. However, the current constraints encountered by the government in the implementation of these activities involve funding.

One more thing which is also important is the need for establishing the proper standard operating procedures (SOP) in land administration services. With the SOP, it is expected, that there is a reference of action in land administration services that can be used as the force of law for people to obtain appropriate services. Often, because of administrative affairs result in a sense of idleness for the people to register land. In fact, the land policy is realized in the framework of land order, i.e. land law order, land administrative order, land use order and land maintenance order and the environment. Of the above land order, one of the quite important targets is pertaining Land Administrative order. Implementation of current land registration is done by two (2) approach, First, by a systematic approach. Second, by sporadic approach, most of the implementation of current land registration is through sporadic approach based on the community request, this is due to the government's ability to conduct a systematic approach is limited. The process for conducting the land registration serves as a land justice so that in the phase of work, there is an adjudication process determining how the legal status of the plot of land, who has a legal relationship with the land and how far is the legal relationship.

Furthermore, it also needs an increase in the legal culture of society, including government apparatuses in supporting the implementation of the land administration system. Linked to its function as the protection of human interests, the law has a purpose and the law has targets to be achieved. The principal purpose of law is to create an order society structure, create orderliness and balance. In achieving the goal, the law serves to divide the rights and obligations between individuals in society, divide authority and arrange way of solving legal issues and to maintain legal certainty law<sup>1</sup>. According to Muchsin law is actually not as a goal but it is only a tool, whose objective is human, then the purpose of law means a human with law as a tool to achieve that goal.<sup>2</sup> Several factors that can affect the public interest to register their land, are sanctions imposed on unregistered land (has not had land rights certificate), or also on the other hand is still not quite understood the significance of land rights evidence (land certificate) as a strong evidence, in addition, it is likely not registered the public land for too high

<sup>68</sup> Sudikno Mertokusumo, *Regarding Law, An Introduction, Liberty, Yogyakarta, 2003*, p. 77,

<sup>2</sup> Muchsin, *Overview of Legal Studies, Badan Penerbit Iblam, Jakarta, 2006*, p. 11.

costs, and too long completion. Especially citizens who are in rural areas, whose relatively education is still low and the economic situation is still far from adequate, for the most part of them are farm laborers who used to live in the familial association, so they do not or rarely leave legal norms and provisions of law in writing on land issues. In fact, the rule of law that everyone must know promulgated regulation is not always true, because most people just do not know how the regulation in land sector applies to them and their land, what the type of rights they can have. There are some technical aspects found in the land sector is also not easily understood by most people, in addition, it is still a lack of information that comes to the public about the provisions in the land sector in general, and in particular on the procedures and the importance of the land in order to guarantee legal certainty.

UUPA is intended to be able to give the greatest welfare of the people and defend the people with weak economy. To grow the confidence in the existence of the certificate and its functions which can be believed by the public to defend the existence of their rights to land, so it can be really perceived as a property protecting tool and use of the property of itself. Therefore, it needs modern agrarian culture with increased knowledge of agrarian is increasingly improved throughout all elements that are involved in the process of issuing certificates, including officers are stationed in front in defending the rights of the entitled people over the land as well as its people participate actively of registering their land rights so their rights are protected to use and to be activated in supporting economic activities. The presence of UUPA is expected to create a good and order land administration. According to the author, a good and order land administration system should also be undertaken in an effort to avoid high cost and cumbersome handling for the certification of land rights. The present of legal certainty assurance in land registration is the government ensures that the rights holders (the subjects) are really entitled to, or have a legal relationship with the land (the objects), evidenced by the recording of juridical and physical data on the plots of land accepted as the valid data and supported by availability of cadastral measurement maps, a common list of the plots of registered land and the maintenance of the common list with the latest data and the rights holders are given rights evidence that applies as a strong evidentiary tool that commonly called as land certificates. With its registered plots of land is not merely for the realization of security assurance of the proprietary in moving towards legal certainty.

#### D. CONCLUSION

1. The development of the Indonesian land politics of law in providing the protection of land proprietary rights in every order of power has not been able to realize the people's welfare maximally and the legal certainty and protection. From technical-juridical view of point, the main purpose of land registration is to create legal certainty and ensure legal protection. In the reality, such legal certainty of land registration fails to be enjoyed by people. Land registration in Indonesia is theoretically aimed at ensuring legal certainty, which is stipulated in PP Number 24 / 1997 adopts a negative publicity (negative system) containing positive elements, because of generating a title certificate that applies as a strong item of evidentiary. Thus, the land registration with a negative system without accompanied by reinforcement legal instrument, still contains weaknesses in meeting the goal of positive-normative law, so that the certainty obtained is still relative. That situation shows that, the land registration system is currently not ensuring legal certainty of land rights effectively. It is known that factors that cause to have not held a registration system in the context of a certainty and protection of land title to the public among other, include: a legal politic in land is unclear, a weak legal certainty, a weak bureaucracy of BPN in implementing land registration and the culture factor that has not put forward morale integrity.
2. Agrarian politics of law should refer to the wider public interest based on the principles of welfare and justice, as prescribed by the 1945 Constitution. For this purpose, a legal development must be undertaken that essentially leading to a renewal of the provisions of the existing law and considered obsolete, and the creation of the provisions of the new law needed to meet the demand of development that occurs in the society, the assertion function of the institution or law enforcement and coaching members i.e. BPN apparatus, and increase legal awareness. Law on Land to be issued would be meaningless if there is no change from the existing publicity system to the positive publicity system. Changes lead to positive publicity system represents a major step-forward (*futuristic*) for Indonesia, by establishing a legal political model in protecting land title through an ideal registration system with reference to a positive publicity system, in which a law of land forms an embodiment of law enforcement and legal certainty in the land sector. Therefore, it should be affirmation of Law that may replace UUPA regulating the positive publicity system. By using the positive *publicity system* then the consequence is the state guarantees the validity of the data presented. People may fully trust the data presented in the register that has been made and approved by the State. The person who will provide the land or the creditors that will accept land

as collateral for credit need not hesitate to hold a legal action with the person whose name is listed in the register as the holder of rights. In an effort of strengthening legal protection of the registered land title there must be institutions in the insurance fund in land registration and land rights as an effort to strengthen the certainty guarantee (*title insurance*).

#### **E. Implication**

Whereas, Legal politics of land today adopts negative publicity system (*negative system*) containing positive elements that still fails to provide legal certainty and protection insurance in the context of land title, where a land registration system with the negative system encounter many weaknesses in satisfying the goal of relatively positive-normative law and people with their own interest can claim the land.

Whereas, agrarian politics of law should refer to the wider public interest based on the principles of welfare and justice, as prescribed by the 1945 Constitution. However, it still fails to provide legal certainty and protection of land title in fact, still adopts a negative publicity system (*negative system*) containing positive elements, making it has not been able to realize the people's welfare, therefore, it needs to establish a legal political model adopting positive publication system.

#### **F. RECOMMENDATION.**

1. It is a need to improve the Agrarian Law that better puts forward public needs and in a harmony with other Sectoral Law, and public empowerment in the registration process of land title certification. Institutional support of BPN (National Land Agency) with excellent services and other related government apparatus in order to grow and develop in the framework of a legal protection and certainty on the land title.
2. BPN entities are only assigned to determine the present of administrative defect when a land registration were under certification process. Annulment remains to become the authority of a juridical body and in this context the existence of a special Court is required to address the disputes in land title.

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