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Problems of Complete Systematic Land Registration (PTSL) In The Process of Land Registration In Indonesia

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Abstract: The legalization of assets with various program names such as PTSL is a continuation of past land administration activities, not too different from village land registration per village in 1961, PRONA, ILAP, and LMPDP. That is, PTSL is a current policy that continues past policies on the translation of Article 19 of the UUPA regarding the state's obligation to register all land in Indonesia. The difference is the packaging and packaging as well as the period or the perpetrator of the policy. We call all these programs as part of land titling, or land administration (legalization/land certification), in order to organize the land administration system. The basic argument is still the same, when the state succeeds in organizing its land administration system, then the data collection is more complete, can minimize, conflict, and give a sense of security to landowners, as well as make it easier for other policy makers. That the ratio-logic implementation of the PTSL program is as a translation of Article 19 of the Basic Agrarian Law on the state's obligation to register all land in Indonesia as well as build new land plot data and at the same time maintain the quality of existing land plot data so that all land plots are registered complete and accurate which provides guarantees of certainty and legal protection of land rights and the guarantee of the location and boundaries of land fields so that it is expected to create a climate of Good investment in Indonesia in accordance with the nawasita of President Joko Widodo. The problem of the implementation of PTSL in Indonesia is the existence of synchronization of regulations between Government Regulation Number 24 of 1997 concerning Land Registration Articles 17, 18 and 19 with the Regulation of the Minister of Agrarian Affairs and Spatial Planning of the Head of the National Land Agency of the Republic of Indonesia Number 6 of 2018 concerning Complete Systematic Land Registration of Article 4 paragraph (2) and the PTSL program ignores the tenurial rights of indigenous people, the legal implications of PTSL on customary people's tenure rights in Indonesia is that if the lands of indigenous people are included in the PTSL program, then the customary rights inherent in the community will be destroyed and changed to individual rights only. Article 22 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 6 of 2018 concerning Complete Systematic Land Registration also provides easy requirements for applying for land plot certification so that it is prone to land disputes and conflicts.

Keyword: PTSL, Nawacita Investment, Tenurial Rights.

INTRODUCTION

In 2016, an innovation was launched to accelerate land registration through Complete Systematic Land Registration (PTSL), as an answer to the difficulties in accelerating land registration difficulties in accelerating land registration. This program facilitates the land certification process and aims to accelerate land registration in Indonesia related to proof of land ownership with the issuance of the Minister of Agrarian Affairs and Spatial Planning Regulation No. 6/2018 on Complete Systematic Land Registration. In its development, Systematic Land Registration carried out village by village in district areas and village by village in urban areas covering all land parcels in the entire territory of the Republic of Indonesia became the PTSL Policy. This policy is a National Strategic Program with the concept of building new land parcel data and at the same time maintaining the quality of existing land parcel data so that all registered land parcels are complete and accurate which provides assurance and legal protection of land rights and assurance of the location and boundaries of land parcels in accordance with the nawacita of President Joko Widodo.

Legal problems then arise when the Government in order to accelerate the process of land registration launches the PTSL program. Efforts to realize legal certainty through land registration do not always run smoothly, various obstacles are found both from the subject of law and from the rule of law itself, for example, the implementation of the *Contradictoire Delimitatie* principle in the Complete Systematic Land Registration (PTSL) activity. The *Contradictoire Delimitatie* principle is the obligation of land rights holders to pay attention to the placement, determination and maintenance of their land boundaries, which are carried out based on an agreement between the landowner and the boundary neighbors. The approval of land boundaries affects the correctness of the physical data of the land plot, namely location, area and boundaries. The *Contradictoire Delimitatie* principle is regulated in Government Regulation No. 24/1997 Article 17 paragraph (2) and paragraph (3) and Article 18 paragraph (1).

Regarding the application of the *Contradictoire Delimitatie* principle *in* PTSL activities, there is an inconsistency with Government Regulation Number 24 of 1997. Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 6 of 2018 on Complete Systematic Land Registration requires all land parcels to be measured without exception including *absentee* land as stated in Article 4 paragraph (2) which reads "The object of PTSL as referred to in paragraph (1) includes **all land parcels without exception**, both land parcels that have no land rights and land parcels that have rights in order to improve the quality of land registration data."

According to Government Regulation No. 24 of 1997, the *Contradictoire Delimitatie* principle is an obligation that must be implemented in land registration. Whereas in the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 6/2018, the *Contradictoire Delimitatie principle is ruled* out, starting from the fact that there are no exceptions in PTSL objects including *absentee* land where the landowner is not present and does not give approval of the boundaries during measurement. In addition, the Technical Guidelines for Complete Systematic Land Registration Number 3/Juknis-HK.02/III/2023 also allows the installation and/or designation of boundary marks to be carried out by someone other than the landowner, namely the Village/Kelurahan apparatus, Head of RT/RW, or Hamlet Head.

If the *Contradictoire Delimitatie* principle is not fulfilled, it will certainly affect *absentee* lands. Most agricultural land in Indonesia is located in rural areas close to indigenous communities. If there are many *absentee lands* arising as a result of the PTSL

program, it certainly has the potential to cause harm to the community, even threatening the existence of indigenous peoples themselves.

Land is a gift from God Almighty that is very important for human life. As a source of welfare, prosperity and life, and its management is the responsibility of the state as mandated in Article 33 paragraph (3) of the 1945 Constitution that: "The land and water and the natural resources contained therein shall be under the control of the State and shall be utilized for the greatest prosperity of the people".

The definition of "controlled by the state" must be interpreted to include the meaning of control by the state in a broad sense which is sourced and derived from the conception of the sovereignty of the Indonesian people over all sources of wealth "earth, water and natural resources contained therein", including the notion of public ownership by the collectivity of the people over these sources of wealth. The people collectively are constructed by the 1945 Constitution to give a mandate to the state to make policies (*beleid*) and actions of management (*bestuursdaad)*, regulation (*regelendaad),* management (*beheersdaad),* and supervision (*toezichthoudensdaad)* for the purpose of the greatest prosperity of the people.

Obtaining legal certainty and legal protection of land rights, including customary land rights, is indeed a necessity. However, the process of administering customary land, which is intended to achieve legal certainty and protection, should not lead to new problems. The PTSL program does provide legal certainty for holders of these rights certificates. However, what needs to be underlined is the way in which the objects and subjects of these certificates obtain their certificates. The PTSL program has cut costs and time, and simplified administrative requirements. With the ease of these requirements, it certainly provides opportunities for investors to control land in Indonesia. This will certainly erode the existence of indigenous peoples, especially the erosion of customary rights in the field of customary land rights on the grounds of national interests which often cause environmental damage, loss of culture, and even more problematic is the loss of characteristics and personality in the nation. This often leads to conflict in society. The most worrying issue is horizontal conflict within the indigenous community itself and/or between indigenous communities. Therefore, in addition to clarifying the subjects and objects of customary land rights, it is also necessary to understand the dynamics of the legal relationship between the two. This is because indigenous peoples are not immune from change.

With officially registered land, indigenous peoples may have easier access to financing and development assistance. But there is also a risk that customary land will be more easily sold or mortgaged which could threaten the sustainability of indigenous land ownership. Land registration can also change the status of land from communal land to individual land, potentially changing the social function of land in indigenous communities and even leading to the erosion of indigenous culture and identity.

Based on the above description, a question arises which becomes the problem formulation in writing this paper, namely:

1. What are the *logical ratios* as well as the problems of Complete Systematic Land Registration implemented in the process of accelerating land registration in Indonesia?
2. What are the legal implications of Complete Systematic Land Registration on the *tenurial* rights of indigenous peoples in Indonesia?

METHOD

The research method is a scientific activity based on certain methods, systematics and thoughts aimed at studying one or several specific legal symptoms by analyzing them. The notion of science as knowledge, activity, and method is a logical unity that runs sequentially. An orderly understanding of science stems from 3 main characteristics, namely as a series of human activities or processes, as a discipline of thought actions or procedures, and as a whole of the results achieved or products. Legal research is a process to find legal rules, legal

principles, and legal doctrines to answer the legal issues at hand. Therefore, the research method must be chosen in making a paper. The method used is normative legal research with prescriptive analysis. The approach methods used are the Statute Approach, the Analytical Approach, and the Historical Approach.

RESULTS AND DISCUSSION

Logical-Ratio And Problematic Implementation Of Complete Systematic Land Registration In Indonesia

The term 'agrarian' comes from the Latin word 'ager', which has various meanings, including field, countryside (as opposed to urban), territory, and state land. According to the Big Indonesian Dictionary, agrarian means agricultural affairs or agricultural land. The Black Law *Dictionary defines agrarian as anything related to land, or land tenure to a division of landed property.*

The national land law as contained in the UUPA is superior to the agrarian law provisions of the colonial era. UUPA opposes the strategy of Capitalism because it gave birth to colonialism, which causes "exploitation of man over man", UUPA also opposes socialism which "negates individual rights to land". UUPA recognizes individual rights to land, but has a social function, UUPA is more in favor of people from weak economic groups, especially farmers, because of the state's control over agrarian rights for the greatest prosperity of the people.

Article 33 paragraph (3) of the 1945 Constitution contains two defining words. These words are formulated passively as 'controlled' and 'utilized'. When converted into active words, they become the words 'menguasai' and 'mempergunakan'. The word 'dikuasai' authorizes the state to carry out state functions in controlling land and other natural resources (instrumental/tools). The word 'utilized' contains a command to the state to use its authority for the greatest prosperity of the people (*teleologic/purpose*). These two principles, between tool and purpose, are the desired principles relating to the relationship of state control over land and other natural resources in Article 33 paragraph (3) of the 1945 Constitution.

The notion of "controlled by the state" must be interpreted to include the meaning of control by the state in a broad sense which is sourced and derived from the conception of the sovereignty of the Indonesian people over all sources of wealth "earth, water and natural resources contained therein", including the notion of public ownership by the collectivity of the people over these sources of wealth. The people collectively are constructed by the 1945 Constitution to give a mandate to the state to make policies (*beleid*) and actions of management (*bestuursdaad)*, regulation (*regelendaad),* management (*beheersdaad),* and supervision (*toezichthoudensdaad)* for the purpose of the greatest prosperity of the people.

Article 33 Paragraph (2) of the 1945 Constitution states that branches of production that are important and control the livelihood of many people are controlled by the state. According to the Constitutional Court, to determine whether a branch of production is important and controls the lives of many people so that it needs to be controlled by the state depends on the dynamics of the development of the conditions of each branch of production. What must be controlled by the state are branches of production that are considered important to the state and/or that control the livelihood of many people, namely:

1. Branches of production that are important to the state and control the lives of many people.
2. Important for the state but not controlling the livelihood of many people; Or
3. Not essential to the state but vital to the lives of many people.

All three must be controlled by the state and used for the greatest benefit of the people. However, to determine the branch of production is up to the Government together with the People's Representative Council to assess what and when a branch of production is considered important for the state and / or which controls the lives of many people.

Mass land registration is the implementation of Article 19 paragraph (4) of the Basic Agrarian Law and was first carried out in 1981 through the National Agrarian Operation Project or better known as PRONA, based on the Decree of the Minister of Home Affairs No. 189 of 1981 concerning the National Agrarian Operation Project (PRONA). The rationale for the birth of PRONA as stated in the Ministerial Decree was to implement the Land Order Chess, to provide legal certainty for land tenure and ownership as strong evidence, to resolve land disputes, to provide peace for land tenure and ownership, and as an effort to create socio-political stability in the community.

After 34 years, the Government realized that determining the location based on proposals from the community first was not optimal, so through Article 7 of the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 28 of 2016 (the latest PRONA regulation) the pattern was changed and the determination of the location for the acceleration of PRONA was carried out directly by the Head of the Land Office in its working area. The determination of the location is carried out through the selection of locations where the results of rights determination and land registration activities are still small or low, and starting from the periphery and gradually heading to the urban center.

If the land registration mechanism is used as usual, it will take a very long time to be able to certify all land parcels in Indonesia. Therefore, the Government made a breakthrough through the Complete Systematic Land Registration (PTSL) program to accelerate land registration so that land parcels that have not been titled can be immediately titled. Therefore, the government has announced that by 2025 all land parcels will be registered. The large number of unregistered land parcels encourages the government to make a policy of Accelerating Land Registration through PTSL which is based on Presidential Instruction Number 2 of 2018 concerning the Acceleration of Complete Systematic Land Registration in All Regions of the Republic of Indonesia which states that:

In order to register all land parcels in the territory of the Unitary State of the Republic of Indonesia as mandated by Article 19 of Law Number 5 of 1960 concerning Basic Agrarian Principles, the government launched a program to accelerate Land Registration through Complete Systematic Land Registration until 2025.

Presidential Instruction Number 2 of 2018 is one of the bases for the issuance of Minister of Agrarian and Spatial Planning/National Land Agency Regulation Number 6 of 2018 on Complete Systematic Land Registration (PTSL). The form of acceleration of land registration as the implementation of Presidential Instruction Number 2 of 2018 through Complete Systematic Land Registration (PTSL) is:

1. Increased Land Titling Target
2. Simplification in the Land Registration Process

Asset legalization under various program names such as PTSL is a continuation of past *land administration* activities, not too different from the 1961 village-by-village land registration, PRONA, ILAP, and LMPDP. That is, PTSL is a current policy that continues past policies on the translation of Article 19 of the UUPA on the state's obligation to register all land in Indonesia. The difference is the packaging and the period or policy actors. We call all of these programs as part of *land titling* or *land administration* (legalization/sertification of land), in order to organize the land administration system. The basic argument is still the same, when the country succeeds in organizing its land administration system, the data collection is more complete, can minimize conflicts, and provide security to landowners, as well as making it easier for other policy makers.

The vision and mission document submitted by President Joko Widodo ahead of the 2014 Presidential Elections mentioned three main problems of the nation, namely the decline of state authority, the weakening of the joints of the national economy, and the spread of intolerance and the crisis of national personality. These problems require strategies that are

elaborated through the implementation of programs in each field of government. President Jokowi then narrowed it down to nine priority agendas (nine hopes or agendas) or called Nawacita.

In the agrarian perspective, Nawacita is interpreted that the priority agenda will seek to re-present the state (agenda number 1), build Indonesia from the periphery (agenda number 3), ensure legal certainty of land rights including the settlement of land disputes and oppose the criminalization of the prosecution of community land rights (agenda number 4), and improve people's welfare through agrarian reform and a 9 million hectare land ownership program (agenda number 5). Essentially, Nawacita translates from the spirit and teachings of Trisakti, namely: politically sovereign, economically independent, and culturally characterized, which then underlies the spirit and implementation of agrarian reform.

The government is trying to position PTSL as part of a scheme to grow the people's economy and open markets. Assets that do not have a *title* are much more difficult to mobilize and enter the market economy, so the idea of PTSL is believed to be able to help unravel the community economy if the assets owned can work in an open market economy. Assets in this case in the form of land, if mobilized, will revive the community economy and in turn improve community welfare.

In many developing countries, capitalism often fails in practice because the average or largest assets are controlled by the majority/dominant group. This group is categorized as poor but has large assets, however, the assets are *idle* or fall into *extralegal* assets. In order to change and pursue the country's macroeconomic growth, these assets must be legalized (dissipated). A prerequisite for the development of an open market economy is the legalization of community land assets. If the assets are legalized, then the state does not need to interfere as much and individuals who put their assets or actively engage in the open market economic system become part of the economic movement scheme to pursue growth. In short, if people's assets are legalized and then transact openly in the market, the economy will automatically move and growth will be achieved.

The current PTSL asset legalization project is much more massive in its targets and demands. The government intends that the more certificates issued will be directly proportional to the movement of certificates into the market. This means that mortgages and other capital markets that utilize certificates can be a measure of macroeconomic growth, and in fact, from year-to-year mortgages have increased significantly. However, the above is not absolutely necessary to be supported and implemented considering that Indonesia is a communal country and even many land ownership is communal, as well as a country that has a high level of *trust* between groups of people, so that, with a piece of paper, land rights will be sold in pawnshops, banks and other financial institutions. This means that in many parts of Indonesia, people do not need a land certificate to access capital, just a land certificate. The absence of a certificate of ownership is not a problem and is not even a major source of land conflict, nor does it necessarily increase access to capital for the community. Mobilizing *dead capital* through certification is problematic when dealing with communal rights, because it creates new problems for indigenous peoples.

Seeing how changes in the regulations and guidelines for the implementation of PTSL often change the impression of being in a hurry is very difficult to escape. These changes reflect the immaturity of the strategy and concept of the PTSL program created by the government. Regulations are set and revised in a patchy manner. The large number of *stakeholders* involved and the many technical and political problems in the field are the cause of these regulatory changes. This becomes more complicated considering that the regulation on PTSL is only stipulated in the legal hierarchy at the Ministerial Regulation level. Meanwhile, several legal principles manifested in regulations at the level of Government Regulation No. 24/1997 overlap with the Regulation of the Minister of Agrarian

and Spatial Planning/Head of the National Land Agency which regulates the acceleration of the PTSL program.

The parameters of participatory laws and regulations can be seen from the purpose of drafting laws and regulations with the aim of organizing good governance. Furthermore, there is active involvement from the community as an embodiment of the rights and obligations of the community. The drafting process must also be able to empower the parties to be able to participate in a balanced manner. Every aspiration can be accommodated and considered properly, by opening wide access to various information which is a public right.

Equally important are participation, openness, accountability, and supervision to prevent misuse of the government's development budget. Article 96 paragraph (1) of Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation, reads "The *public has the right to provide input orally and / or in writing at every stage of the formation of laws and regulations*." The public can be individuals or groups of people who are directly affected and/or have an interest in the content material of draft laws and regulations. Lawmakers will be obliged to inform the public and conduct public consultation activities through public hearings, working visits, seminars, workshops, discussions, and/or other public consultation activities. The application of the principle of FPIC (*Free, Prior, Informed, Consent*) in the formation of laws is an effort to accommodate the aspirations of indigenous peoples. FPIC can be said to be a social license to convince people but by ensuring that they are fully informed.

The Indonesian government has a legal obligation to engage communities in accordance with the Constitution of the Republic of Indonesia (Article 18B) to "recognize and respect customary/traditional communities in accordance with their traditional cultural laws". Indonesian law also accommodates the interests of community rights when dealing with development. This is indicated, among others, by the amendment of the 1945 Constitution which added a separate chapter on human rights. The position of the Government of the Republic of Indonesia regarding development and human rights can be found, among others, in the explanation of Law No. 11/2005 on the Ratification of the *International Covenant on Economic and Cultural Rights*, as follows: "Finally, it is realized that the life of the nation and state that does not respect, uphold and protect human rights will always cause injustice to the wider community and does not provide a healthy foundation for economic, political, social and cultural development for the long term".

TAP MPR number IX of 2001 on Agrarian Reform and Natural Resource Management, states that agrarian reform and natural resource management must be implemented in accordance with the principles of, among others, respecting and upholding human rights, developing democracy, legal compliance, transparency and optimizing people's participation, realizing justice in the control, ownership, use, utilization and maintenance of agrarian resources and natural resources, recognizing and respecting the rights of customary law communities and the nation's cultural diversity over agrarian resources and natural resources. The direction of agrarian reform policies and natural resource management must refer to these principles.

With officially registered land, indigenous peoples may have easier access to financing and development assistance. But there is also a risk that customary land will be more easily sold or mortgaged which could threaten the sustainability of indigenous land ownership. Land registration can also change the status of land from communal land to individual land, potentially changing the social function of land in indigenous communities and even leading to the erosion of indigenous culture and identity. Individual certificates of ownership encourage the commercialization and transfer of land ownership through the land market mechanism. This has a negative impact on efforts to organize equitable land tenure and ownership. Those with greater access to capital have the opportunity to

concentrate their ownership and control of land assets on a large scale without clear limitations on the maximum area.

Based on this explanation, the Government policy implemented in the implementation of the PTSL program is considered to be able to provide a sense of justice, benefit and *of* course legal certainty because PTSL provides equal space and opportunity for every citizen to play an active role in it and the *output of* these activities is able to provide legal certainty of land ownership and provide more benefits for life and life.

Legal Implications Of The Implementation Of Complete Systematic Land Registration (PTSL) On The Tenurial Rights Of Indigenous Peoples In Indonesia

The agrarian relationship between the state and citizens over land and other natural resources is the main thing that forms the basis for the establishment of a state. Land and other natural resources constitute the territory that is an element of a state's existence. Even without being regulated in the constitution, the relationship of control between the state and land and other natural resources already exists. However, some countries emphasize the relationship of state control over land and other natural resources in relation to the economic system to be built. For some countries, the inclusion of agrarian relations in their constitutions is a reflection of their early founding struggles. In some other countries in Latin America, agrarian constitutions serve as the basis for agrarian reform as a consequence of the development of state life.

In land registration activities, the *Contradictoire Delimitatie* principle is known, which is applied in Articles 17, 18, and 19 of Government Regulation No. 24/1997. The *Contradictiore Delimitatie principle* is a norm in Land Registration that obliges holders of land rights to pay attention to the placement, determination and maintenance of land boundaries on the basis of the consent and agreement of the parties concerned, in this case the owners of land adjacent to the land concerned. If there is no mutual agreement, mediation can be conducted until the boundary is determined by a court decision. The main purpose of the application of the *Contradictoire Delimitatie* Principle is to provide certainty of land boundaries, location and area and to reduce land disputes/conflicts, especially land boundary issues and *overlapping* land ownership.

In land registration activities, the process that begins before the certificate is issued is the process of measuring and mapping the land parcel to ensure the physical truth of the land, both the location, area, and boundaries of the land parcel. Measurement and mapping of land parcels for the preparation of Surat Ukur as an inseparable attachment to the Land Certificate, must fulfill the cadastral technical rules and juridical rules where the process of obtaining data on the size of the land parcel fulfills the principle of *Contradictoire Delimitatie*.

Regarding the application of the *Contradictoire Delimitatie* principle in the Complete Systematic Land Registration (PTSL) activities, there is an inconsistency with Government Regulation Number 24 of 1997. Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 6 of 2018 concerning Complete Systematic Land Registration requires all land parcels to be measured without exception including *absentee* land as stated in article 4 paragraph (2) which reads "The object of PTSL as referred to in paragraph (1) includes **all land parcels without exception**, both land parcels that have no land rights and land parcels that have rights in order to improve the quality of land registration data."

In the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 6 of 2018, the principle of *Contradictoire Delimitatie is ruled* out, starting from the fact that there are no exceptions in PTSL objects including *absentee* land where the landowner is not present and does not give approval of the boundary during measurement. In addition, the Technical Guidelines for Complete Systematic Land Registration No. 3/Juknis-HK.02/III/2023 also allows the

installation and/or designation of boundary marks to be carried out by someone other than the landowner, namely village officials, heads of RT/RW, or hamlet heads. If the *Contradictoire Delimitatie* principle is not fulfilled, it will certainly affect *absentee* lands. Most agricultural land in Indonesia is located in rural areas close to indigenous communities. If there are many *absentee lands* that arise as a result of the PTSL program, it certainly has the potential to cause harm to the community, even threatening the existence of indigenous peoples.

With officially registered land, indigenous peoples may have easier access to financing and development assistance. But there is also a risk that customary land will be more easily sold or mortgaged which could threaten the sustainability of land ownership by indigenous peoples. Land registration can also change the status of land from communal land to individual land, potentially changing the social function of land in indigenous communities and even leading to the erosion of indigenous culture and identity.

Increased investment is needed to restore the economy and increase economic growth, which has been depressed due to the *Covid-19* pandemic. The government's efforts to increase investment require the availability of large tracts of land. Land, among others, is needed to build infrastructure to support investment such as roads, ports, airports, bridges, and so on. The creation of good infrastructure is expected to attract investors to invest in Indonesia. One of the factors that can attract investors from developed countries to invest is the availability of infrastructure that supports the implementation of investment properly. Land is also needed to support the investment itself, among others, to build factories, warehouses, and so on. Even investments such as plantations, agriculture, and hospitality require large areas of land.

Efforts to fulfill land needs for investment purposes often target customary lands that have long been controlled by a customary law community. In order not to trigger conflict, the acquisition of customary land for investment purposes must be carried out in accordance with the mechanisms stipulated in laws and regulations and through deliberation to reach consensus. However, deliberations to take over customary land often do not go well. In fact, customary land is sometimes directly given by the authorities to investors because they consider the land to be state land. The acquisition of customary land for investment results in the loss of customary land because customary land becomes state land when the period ends.

Claims to customary land may be challenged as to their validity despite the public-private categories generally established by law. In particular, many traditional groups argue that their customary rights have greater legitimacy than the state's legal claims on the grounds, among others, that they existed before the state.

Article 18B paragraph (2) of the 1945 Constitution states that the state recognizes and respects each unit of customary law communities and their customary rights. Furthermore, the bond between indigenous peoples and their land and natural resources as one of the pillars of the identity of indigenous peoples is further strengthened in Article 6 paragraph (2) of Law No. 39/1999 on Human Rights, which states: "The identity of indigenous peoples, including rights to customary land (rights over customary territories) is protected, in line with the times".

From the wording of Article 18B paragraph (2) of the 1945 Constitution, it appears that the state's recognition and respect for customary law communities and their traditional rights is not automatic, but conditional. The requirements that must be met are the unity of indigenous peoples and their traditional rights are as follows:

1. Still alive.
2. In accordance with the development of society.
3. In accordance with the principles of the Republic of Indonesia; and
4. Regulated by law.

Referring to the requirements for the recognition of the unity of indigenous peoples and their traditional rights as described, it appears that the existence of customary jurisdiction

or customary land is a must because it indicates that the indigenous peoples concerned are still alive. Customary land is the common property of the customary law community which is believed to be the gift of a supernatural power or the legacy of ancestors, as the main supporting element for the life and livelihood of the customary law community concerned at all times.

According to the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 14 of 2024 concerning the Implementation of Land Administration and Land Registration of Customary Law Community Ulayat Rights Article 1 paragraph (4) states that "Land of Customary Law Community Ulayat Rights or what is called by other names hereinafter referred to as Ulayat Land is land that is in the control area of customary law communities which according to reality still exists and is not attached to any land rights".

The existence of customary land is what distinguishes customary law communities from communities in general. The focus that distinguishes customary law communities from communities in general is in terms of property owned by customary law communities, both tangible and intangible property. Customary land includes tangible property and the place of residence of the customary law community. Therefore, it is important for indigenous peoples to maintain and continue to control their customary land because that is what distinguishes them from society in general.

Although ulayat rights are recognized and protected, the implementation of ulayat rights must comply with Article 3 of the UUPA which reads:

In view of the provisions of Articles 1 and 2, the implementation of hak ulayat and similar rights of customary law communities, to the extent that they still exist in reality, must be in such a way that it is in accordance with the national and State interests, which are based on national unity, and must not conflict with other laws and higher regulations.

This means that the implementation of the customary law community's ulayat rights as long as in reality they still exist must be in accordance with national and State interests, based on national unity, and must not conflict with higher laws and regulations. On the other hand, the implementation of customary rights must also provide benefits and welfare for indigenous peoples.

If referring to Article 4 paragraph (2) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 6 of 2018 concerning Complete Systematic Land Registration, then all land parcels including the lands of indigenous peoples are also measured even without requiring the consent of the owner of the indigenous peoples' land parcels. This of course results in the lands of indigenous peoples being registered and a right being attached to them.

If the land of indigenous peoples is attached to a right on the land parcel, then the status of land rights of indigenous peoples is automatically lost, changing into individual rights only. This is in accordance with the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 14 of 2024 concerning the Implementation of Land Administration and Land Registration of Customary Law Community Ulayat Rights Article 3 which reads:

The implementation of Ulayat Rights by indigenous peoples as referred to in Article 2 paragraph (1) shall not be carried out in the case of fields:

1. Already owned by an individual or legal entity with a land right.
2. Land parcels that have been used as public facilities/social facilities.
3. Is a land parcel that has been acquired or acquired by a government agency, legal entity or individual in accordance with the applicable provisions and procedures; and / or
4. Swapraja land and former swapraja land that has been abolished by the Conversion Provisions in Law Number 5 of 1960 concerning Basic Agrarian Regulations.

Formal rights can increase the resources legally available to communities, guarantee their future access, provide a clear position in the face of violations and increase income. All of these have real effects.

Another problem related to the recognition of indigenous peoples is the difficulty of identification, especially related to customary land. This is because *legally, customary* law communities generally do not have or cannot show proof of control over their customary land for generations over the years. In addition, government agencies also do not have records of customary lands in their regions. The absence of *formal legal* evidence of indigenous peoples' control over their customary land is feared to result in the non-fulfillment of the requirements for indigenous peoples to obtain recognition.

Although customary legal orders are usually considered subordinate to state law, the parallel co-existence of the two orders may lead to conflict and multiple sources of validating claims to *tenure* rights, encouraging *'forum shopping', where* actors seek to find and utilize the legal system that best supports their interests. In natural resource management in particular, this can also lead to what has been termed 'barren dualism', whereby the state enacts legislation that is certain to be unenforceable and inconsistent with local application; as a result, the rules are inevitably ignored but the actions of locals are criminalized.

As a country based on law, in relation to the issuance of land rights certificates, the government must be able to provide legal certainty. Legal certainty can be realized if government actions are carried out in an accountable manner. Based on the concept of *good governance*, the exercise of government power must be based on good governance. Likewise, the implementation of systematic registration by the government, the final result of the implementation of land registration activities is the issuance of land certificates by the government through the National Land Agency. Land certificates that have been issued by the National Land Agency must be able to guarantee legal certainty and provide protection to certificate holders. In accordance with the purpose of implementing land registration, namely to provide legal certainty and protection to holders of rights to a parcel of land, apartment units and other registered rights so that they can easily prove themselves as holders of rights to a particular land object. Indonesia as a state of law requires that the administration of state and government affairs be based on the law and provide guarantees for the basic rights of the people. Therefore, the principle of legality is the basis for the legitimacy of government actions and guarantees the protection of people's rights.

The legalization of land rights can bring communities under the control of the state, subjecting them to regulations and other obligations that they could previously avoid. In some cases, this may improve forest management, such as in areas that were previously poorly managed or open access, but it may also lead to the destruction of customary institutions capable of better managing resources and compound difficulties through the imposition of rules that local people find inappropriate. Regardless of how it is authorized, it is likely that it will have an effect, for better or worse, on the application of adat, decision-making, local rule-making and local culture.

The existence of inconsistencies between higher and lower regulations can actually cancel the lower regulations, but in the practice of state administration, the inconsistencies do not automatically cancel the lower rules before the lower rules are canceled by the court authorized to conduct *judicial reviews*. Therefore, Permen ATR / BPN Number 6 of 2018 remains valid and is used as the basis for implementing PTSL until there is a *judicial review* decision from the Supreme Court. Regarding the unsynchronized regulations, some argue that by looking at the increasingly dynamic development of society, the Government is required to anticipate these developments, especially regarding changes in terms of accelerating State Administration. In this case, the principle of legality does not always have to be rigidly maintained because the State Administration is not only limited to implementing a

Legislation, but authorized officials are also obliged to be active in order to carry out public service tasks, for example in the implementation of accelerated land registration.

After customary land became an economic asset with the PTSL program, concentrated efforts to provide land for development were accommodated in a land bank. It is clear that the purpose of agrarian *reform*, which was supposed to be "*peasant led agrarian* reform" with the spirit of social justice and agrarian sovereignty, has been hijacked, turning into "*market led* agrarian reform" with a *populist-authoritarian-capitalistic-neoliberal character.*

CONCLUSION

That the *ratio-logical* implementation of the PTSL program is as a translation of Article 19 of the Basic Agrarian Law regarding the state's obligation to register all land in Indonesia and build new land parcel data and at the same time maintain the quality of existing land parcel data so that all registered land parcels are complete and accurate which provides assurance of certainty and legal protection of land rights and assurance of the location and boundaries of land parcels so that it is expected to create a good investment climate in Indonesia in accordance with the nawacita of President Joko Widodo.

The problem with the implementation of PTSL in Indonesia is that there is an unsynchronized regulation between Government Regulation Number 24 of 1997 concerning Land Registration Articles 17, 18 and 19 and Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 6 of 2018 concerning Complete Systematic Land Registration Article 4 paragraph (2) and the PTSL program ignores the tenurial rights of indigenous peoples.

The legal implications of PTSL for the tenure rights of indigenous peoples in Indonesia are that if indigenous peoples' lands are included in the PTSL program, the customary rights inherent in indigenous peoples will be eliminated and replaced by individual rights only. Article 22 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No. 6/2018 on Complete Systematic Land Registration also facilitates the requirements for applying for certification of land parcels, making them prone to land disputes and conflicts.

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