



Implementation of good governance principles in land registration process based on justice value in Indonesia

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Abstract

The administration of government which is based on the principles of *good governance* is the foundation for the formulation and application of democratic state policies. Good governance is a conception of governance that is clean, democratic and effective in accordance with the ideals of a civil society. Good governance is closely related to the contribution, empowerment and balance between the three pillars, namely the government, the private sector and the community. By understanding the things mentioned above, it is important to discuss the formulation of the implementation of *good governance* based on the justice value in the context of organizing land registration by the land certificate maker as one of the parties that has the authority in carrying out land registration, especially maintaining land data so that it can provide better services to the community.

The results showed that the implementation of *Good Governance* Principles in the process of Land Registration by Land Certificate Maker based on the Justice Value, the principles of *good governance* should be upheld in various important government institutions, these principles include: Community participation, upholding the rule of law, transparency, care and stakeholders, oriented towards consensus, equality, effectiveness and efficiency, accountability, and strategic vision, so that what Indonesia desires to be a *Clean and good governance country* can be realized and the loss of factors Political interests, Corruption, unfair justice, Abuse of authority, and lack of integrity and transparency are some of the problems that make good governance unachievable.

Keywords: implementation, *Good Governance*, land registration, justice value

1. Introduction

In Indonesia, In order to to create the orderly administration of land, the official Land Certificate Maker are obliged also to send reports monthly on their work in no more than 10 months after they finished their work. This obligation is motivated by the government's intention to achieve the objectives of land registration as referred to in Article 3 of Government Regulation Number 24 of 1997 which states that Land registration aims:

- a. To provide certainty of law protection to the holder of the right to a land, the unit of houses flats and the rights of others who registered in order to easily be able to prove himself as the holder of the rights are concerned ;
- b. To provide information to parties are concerned, including the government in order to easily be able to obtain the data needed to conduct acts of law concerning areas of land and units house flats are already registered ;
- c. To implement the orderly administration of land.

Physical and juridical Data were reported in monthly by the Official Land Certificate Maker to support the government to provide information to the people who need the data of the land. Considering the Government Rule Number 24 Year 1997 thus expressly included liability, which must be carried out by officials land certificate maker, demanding their professionalism. Although The Government rule Number 37 Year 1998 has been enacted, but the provisions

that regulate their duties, functions, roles and obligations of official Land Certificate Maker is not adequate, because the terms of office of official Land Certificate Maker among others regulate the appointment / appointment and dismissal official Record Deed Land, obligations and rights of official Land Certificate Maker, protocols, as well as sanctions that include administrative, civil and penal sanction, but the provisions regarding the confidential post of official Land Certificate Maker, especially in accommodating the interests and the provision of law protection for their services has not been governed by a regulation legislation yet.

The professionalism of the Land Deed Makers is highly demanded to keep the official Land Certificate Maker secret, because matters related to their work secrets of the official Land Certificate Maker are very meaningful and closely tied to the *trust* between the service users of the official Land Certificate Maker. with the official Land Certificate Maker so that in author opinion, it is necessary to stipulate a regulation regarding the official Land Certificate Maker work secret.

The official Land Certificate Maker is one of the main sources in the context of maintaining land registration data. The official Land Certificate Maker task is to assist the Head of the Land Office (BPN) in carrying out tasks in the field of land registration, specifically in maintaining land registration data ^[1]. As a Public Official, the official Land

¹Article 2 Paragraph (1) Government Regulation No. 37 1998 me state

Certificate Maker or other official assigned to assist BPN, in the context of implementing a land law policy are required to follow the procedures that have been defined by the Act or the regulations specified. their position is also independent and neutral, meaning that in order to execute their duties they will do it impartially and can not be interfered [2].

Public services cover a very basic aspect, namely the fulfillment of people's constitutional rights in order to meet the needs of daily life and respect the principle of equality of humanity. Everyone who deals with bureaucracy must be treated with equal importance. Directions new or model of reforming the system of bureaucracy and service the public Agency for Land National needs to be designed to support democratization and the establishment of *clean and good governance*, namely the growth of government that is rational, transparent, and has the attitude of competition between departments in giving service, encourage the establishment of law and provide accountability to the public (*public accountability*) are regular.

Efforts to repair the most important is doing the reconstruction revamping the system of management of the public that allow creativity and innovation to grow and evolve to establish a culture organizations are sturdy. Mandated by the 1945 Constitution, one of the goals of the formation of the Republic of Indonesia is to realize public welfare. By because it is one of the tasks the principal government is creating a system of management of government that can manage with both source power nationally in order to achieve prosperity and welfare and justice social for the entire people of Indonesia. To realize public services in the field of government bureaucracy, the National Bureaucracy Committee has been formed in an effort to continue the government's plans that have not been effective, namely the creation of an accountable, productive and professional, and free of corruption bureaucracy so that social justice for people can be reached.

So far what has happened in the practice of the land bureaucracy system in Indonesia is that there are many irregularities in the service of registration of land rights and other irregularities such as the occurrence of bureaucratic service discrimination against control, ownership, use and utilization as well as the granting of land rights, which discrimination usually occurs between officials, entrepreneurs and the people. This problem, among many solution implementing a good governance based on justice value can be one solution as functioning bureaucracy and the corruption free-apparatus are the result of this problem solution [3].

2. Main Problem

Based on the background presented above, it can then be formulated that the main problem of this article that is : how is the Implementation Of Good Governance Principles In Land Registration Process Based On Justice Value In Indonesia?

that the principal task is to implement part Land Certificate Maker to activities registration. To answer what activities in land registration in which tasks can be seen from a wide Land Certificate Maker responsible Activity's registration of land stipulated in Government Regulation No. 24 of 1997.

² Widhi Handoko, *Op. Cit.*, p.143

³ Agus Salim, *Social Research Theory and Paradigm*, Second Edition, Yogyakarta: Tiara Wacana 2006, p.76

3. Method of research

This study uses the Socio Legal approach method, namely by conducting a reciprocal research between the law by examining the work of empirical / social law in examining the rules of law that apply in society with the specification of this research is Descriptive Analytical. Data collection through primary data and secondary data. The analytical method used is qualitative, and the presentation of the data is in the form of scientifically written reports.

4. Discussion

The reality of the bureaucratic system of land Acquisition In Indonesia is pseudo characterized by tensions and conflicts between various social structures that have different interests based on operations and exploitation, so that social justice aspired by this state is not achieved. The quality of bureaucratic services is considered bad, long, convoluted, and very discriminatory, if we compare it with private institutions that provide interactive, competitive and fast services, then it looks very contradictory.

Reform of the bureaucratic system and the public service of BPN (National Land Acquisition Bodies) are steps to improve political decay and damage to behavior that is entrenched in the bureaucratic system. In a negative publication system, the benchmark of legal certainty is not "registration" but the validity of "legal actions" which determine the transfer of rights to the buyer. Registration does not make the person who obtained the land from the rightful party, the new rights holder. In this system applies the principle known as *nemo plus juris*. This principle applies from complete Roman law *nemo plus juris in alium transferre potest quam ipse habet* meaning a person cannot transfer or release rights beyond what he himself has. Then the data presented in the registration with a negative publication system should not be simply trusted. The state does not guarantee the accuracy of the data presented. Even if they have registered, the buyer always faces the possibility of a lawsuit from the party who can prove that he is the right holder. The weakness of this system by the countries that use it can be solved by the "acquisitiveverjaring" [4].

Currently, there are two types of publication systems in land registration. First, a positive publication system, which is what is contained in the land book and proof of rights issued is an absolute proof. Second, the negative publication system, namely the certificate issued is a proof of strong land rights, in this case the state does not guarantee the truth of the data presented.

Until Now, Indonesia's Land Acquisition System of publication which is based on Law No.5 Year 1960 and Government Rule No 24/1997 uses a "Negative" System. A system where the data in the certificate can be trusted, until there has been no evidence to the contrary. However, Indonesia's System also contains "positive" element as stated in Article 19 paragraph (2) letter c, that states that registration produce letters that acts as a strong evidence of rights.

The statement that contains the sense that the Government is a Organizers of registration of land should strive as far as possible by presenting it in the data correctly in Land Ownership Book and registration Map. Until long as it is not able to be proven and vice versa, the data presented in

⁴ Boedi Harsono, *Op. Cit.* p.82.

book land and map registration must be accepted as data is correct Both in everyday legal actions, and in litigation in court. Likewise also contained in the certificate of rights, all the data are in accordance with the existing in land Ownership Book and registration Map.

In a positive system, the data presented is guaranteed to be correct. Not only applicable as a means of proving that powerful. In Above, it has been stated that the data contained in the BPN register have the power of proof that is absolute. That the system of publication is not a positive System, as stated in Government Regulation No. 10/1961.

Registration does not produce a *APCN's Indefeasible title*, " Registering something in the list of land Ownership Book on the name of a person does not lead, that people are actually on the ground would lose their rights. People are still able to sue the rights of people who registered in the book of land as a person who is entitled to. So how registration are set in the regulations is not entirely positive, but also negative.

Based on the provisions in PP No. 24/1997 is known that the use of system of registration of rights does not always show the system of publication of the positive (occurs inconsistently against the governmental regulation). Conversely, a positive publication system always requires a rights registration system. In the system of registration of rights, before the registration of land the official will first held a data validation test before the creation of the book of land ownership by performing measurements and making of the map. The land registration system always shows that the system of publication is negative.

Interest policy law of land on the selection of *stelsel publisitas negative* (not pure) associated closely with the purpose of the system of law of land that itself is the creation of justice social (community are fair, prosperous, and prosperity), but because of the selection of the use of the system of law of land on *stelsel publicity negative* (not pure) should be oriented on the values of the basic law, namely to realize the order and regularity, peace and justice. To achieve these objectives the implementation of social justice is determined and depends on the economic structure, policy, socio-culture and ideology in society. As long as the structure does not support towards efforts to seek a balance position of bargaining were relatively similar between the various groups of society, it is difficult to achieve Social justice⁵.

Community justice is social justice. that is, justice whose implementation no longer depends on personal will, or on the merits of individuals who are just, but are structural in nature. This means that the implementation of justice social are already highly dependent to the creation of structures of social were fair. If there is injustice in society, the cause is the social structures that is not fair.

Ensuring social justice was meant to be done through the struggle of repairing the social structures. The lack of social justice can also be defined as behavior to give to others their right for the sake of the realization of prosperity to all. Welfare is the main purpose of the social justice.

Understanding of the meaning of social justice in the BPN bureaucracy can be divided into 3 levels. According to the Theory of working of the Law stated by William J. Chambliss and Robert B. Seidman, the level of the first is the meaning of *the policy maker / law making institutions*.

The second level is the interpretation of *the law sanctioning institutions / law guardian institutions*. The third level is the meaning by *role occupants*.

Meanings of the phenomenon of justice may be different because of the perspective that is used is also different. Even interpretations in one level can also vary. For example, at the level of *law making institutions*, the phenomenon of justice social interpreted another among the founding fathers of the organization of legislative (Parliament and the President). The quality of social interaction among stakeholders who interpret the value of social justice in the realm of communication in the economic and political fields is very decisive in the direction in which social justice is interpreted. Whether directed at the achievement of happiness together or simply be used as a symbol only and only be *unintended consequence*.

Community studies (bureaucrats) on the land bureaucracy system in the pragmatism approach involve the study of the ways symbols are used in communication in social interactions. To the benefit of understanding of the symbols of behavior that is used by stakeholders in the interactions social in the community (bureaucrats) in the system of bureaucratic land, can use the theory symbolic Interaction Method.

Blumer said that the functionalist approach of "symbolic Interaction" contain 3 primary premises : (1) Humans act based on meaning by them in something terms ; An act sometimes just based on the meaning of which is considered in something that there is meaning, something that just a symbol of the meaning. Action man devoted to the pursuit of the meaning of it 's own (*people do not can act to word things, but toward Reviews their meaning*)⁶. (2) Meaning is the result of social interaction ; The meaning of something develops from or through interaction between humans in daily life. This is in line with the current development of the culture of it's own as a result of mutual split system of meaning (*shared system of meanings*). The meanings are studied, revised, maintained, and given restrictions in the context of human interaction. With Thus, the meaning can be narrowed, spread and something may also lose significance for the development of a social interaction. (3) The meaning has been modified and handled through a process of interpretation worn by the individual in the face of "signs" are met. The meanings are held, made reference, and interpreted by someone in dealing with something that they face. It is used as a reference for interpreting a situation, Condition, thing, or other various fields in life.

Overall, Interaction on humans by Meltzer can also be said to based on the belief that : " Individuals and communities are units that are not able to be separated to understand one of the units is comprehensive also requires an understanding of other units as a whole.

Society must be understood from the terms of individuals who compose society, individuals must be understood from the public place where *merekamenjadi* members... Because most large influence of the environment is felt in the form of interaction of social, then the behavior is something that is constructed and is circular, not innate and is off (*realeased*). Through symbolic interaction theory can it be traced, the meanings hidden behind the subject in the rule of law.

⁵ Widhi Handoko, *Op. Cit.*, p.145

⁶ Sanafiah Faisal, *Qualitative Research : Basics and Applications*, YA3, Malang, 1990, p. 15

Meaning of what exist behind the subject behaviour ? The behavior of the subject in the rule of law, and is always determined by various disciplines that about them, which is by Chambliss and Siedman expressed as a resultant.

The interactionist picture of humans by Meltzer can also be said to be based on the belief that: "Individuals and society are inseparable units to comprehend one unit to another and also require understanding of the other units as a whole. Society must be understood in terms of the individuals who make up society, individuals must be understood from the society in which they are members... Because most environmental influences are felt in the form of social interaction, then behavior is something that is constructed and circular in nature, not innate. Through this symbolic interactional theory, the hidden meanings behind the subject in law enforcement can be traced. What is the meaning behind their behavior? The subject's behavior in law enforcement is always determined by various disciplines concerning them, which by Chambliss and Siedman are stated as the resultant results [7]. From this analysis it is clear why the BPN bureaucracy system has not fulfilled the community's sense of justice. In a state of law, law does not merely function as security and public order, its more important role is to create better welfare for the people and achieve the law goal itself, namely justice and to implement the law consistently.

According to I.S. Susanto as stated in the Preamble of the 1945 Constitution, the primary function of the rule of law is:

1. Protection namely the law has the function to protect the public from the threat of harm and adverse actions that come from each other and community groups, including those carried out by the holders of power (government and state) and those who come from outside who are directed towards physical, mental, health, values -as values and human rights.
2. Justice is another function of the law is to protect, protect and provide justice for all people. In a negative can be said that the laws were not fair is if the law were concerned regarded violate the values and rights that we believe should be preserved and protected for all people.
3. Development is the function of the law of the third is the development in order to realize prosperity for the entire people of Indonesia. It contains meaning that the development of Indonesia fully to improve the welfare of the people in all aspects of economic, social, political, cultural, and spiritual. With such law is used as a vehicle both in determining the direction of the destination, and the implementation of the development [8].

Yos Johan Utama, said that the consequences as a rule of law, is "mutatis mutandis". it led to the obligation for the state, to implement the principle of a just state, the principle of justice in the rule of law, trying to get a middle ground between two interests. On one side of the interest, giving the state a chance to run the government with its power, but on the other hand, the community must get protection of their rights through the principle of legal justice. Furthermore, it

is said that the welfare state paradigm places citizens or individuals as legal subjects, which must be protected and prospered in all aspects of their lives. The state in the welfare state paradigm places its citizens as legal subjects not as legal objects [9].

Arief Hidayat, gives an overview of the rule of law, where in a democratic rule of law it cannot be discussed separately or without linking to the concept of the rule of law, because the rule of law is one of the characteristics of a democratic state, and democracy is the safest way to maintain control over the rule of law. The idea of the basis of rule of law is that the rule of law state must be carried out well (in the sense of being in accordance with what is expected by the people of the law) and fair (because the basic purpose of the law is justice) [10]. With this mandate, the function of governance in the field of land must be supported by the presence and human resources (HR) in the land Acquisition bureaucratic system, meaning that their role is not limited to managing aspects of administration and management of land only, as negative stigma that has formed to the "bureaucratic bad stigma" of the land acquisition bureaucratic apparatus in the last few decades. The Indonesia State's goal to realize a good land acquisition bureaucracy system is related to the aim of agrarian reform, namely to create a just and prosperous society, clearly contained in the preamble of MPR Decree No. IX In 2001, it was mandated that agrarian resources and natural resources as the grace of God Almighty to the people of Indonesia, are national treasures that must be gracefully accepted. Therefore it must be managed and utilized optimally for present and future generations in order to create a just and prosperous society, to set the direction and basis for national development that can answer various problems of poverty, inequality and social-economic injustice of the people and the management of agrarian resources that are has been taking place, so far it has caused imbalance in structure, substance and culture of mastery, ownership, use and utilization as well as causing various conflicts in which laws and regulations relating to the management of agrarian resources are fair and sustainable, must be done in a coordinated, integrated and accommodating the dynamics aspirations and community participation, and resolving conflicts.

To realize the noble ideals of the Indonesian nation as set out in the preamble of the 1945 Constitution, it must takes a serious political commitment to provide the basis and direction for a just, sustainable agrarian reform. For this reason, the reform of the agrarian legal system must be carried out in accordance with the following principles: including the welfare of the people, especially through improving the quality of Indonesian human resources, realizing justice in the control, ownership, use, utilization and maintenance of agrarian resources, recognizing and respecting the rights of indigenous and tribal peoples. and national cultural diversity for agrarian resources.

Legal purpose [11] includes the notion of active protection, meaning that it includes efforts to create conditions and

⁹ Yos Johan Utama, *Op. Cit.*, p. 5

¹⁰ Arief Hidayat, *Being a State is Not Easy, In a Political and Legal Perspective*, UNDIP, 4 February 2010. p. 30

¹¹ Soediman Kartohadiprodjo the purpose of law (including land law policy) is to give the term Protection (Protection), in which briefly the purpose of law is to protect or protect human beings, ie not only protect or protect passively, only prevent arbitrary actions and prevent violations of rights only, read in; Soediman Kartohadiprodjo, *Pancasila As the View of Life of the Indonesian Nation, Op Cit.* p. xix.

⁷ Suteki, *Op. Cit.*, p. 63-65.

⁸ IS Susanto, *Evil Corporations in Indonesia products Policies of the new order regime*, UNDIP, Semarang, 1999, p. 17-18

encourage human beings to always humanize themselves constantly. so that the law could create conditions of society that is humane, a manner that allows the process of social takes place in the fair way, in which it fair every man gets the opportunity that the widest possible to develop the whole of humanity as a whole. Overview of justice in general, which means that the volunteer is fixed and steadily continues to constantly give to each person what is already becoming a part or his or her right (*Iustitia est Constans et perpetua voluntas jus suum cuique tribuere*). This Definition of justice ^[12] can be divided into several aspects; 1) Distributive Justice (*iustitia distributiva*) a justice which form of liability-led society to provide to the citizens of the community burden of social, functions, countered services and honor are proportionate (balanced) with the skills and services in relations between citizens, or, seen from the angle of government gives to every citizen is equally without ignoring differences in circumstances of personal or services. 2) Vindicative Justice (*iustitia vindicativa*), namely justice in the form of giving reward (punishment) in accordance with the error in question. 3) Justice Protective (*iustitia protectiva*) is justice in the form of protection that is given to every man, so that no one will receive arbitrary treatment.

Maria SW Sumardjono ^[13], explained that in theory there are three principles of justice related to the distribution of land and a source of the power of nature, namely 1) justice based on the rights, 2) fairness based capabilities / services, and 3) justice on the basis of need. Policies of law of land ownership is intended to achieve three things based from that mutually complementary, ie; the efficiency and growth of the economy, justice social, preservation of the environment and patterns of use of land that is sustainable. To achieve efficiency, can be reached various approaches to stand on aspects of the urgency, consistency and risk.

Justice ^[14] is the value of the universal that recognize and respect the rights are valid for every person and protect their

¹²Soediman Kartohadiprojdo, *Op Cit.* p.xix

¹³Maria SW Sumardjono, *Op Cit.* p. 105... " *Commutative* justice theory emphasizes that distribution justice is intended to provide the same benefits to everyone as justice based on rights. Distribution justice theory emphasizes the division of production based on ability or service and needs. In Indonesia the provision of equal opportunities (commutative justice) and distribution based on services and needs (distribution justice) is difficult to implement because initial capital differs between community groups and as a whole more people are in need than those who have the ability to obtain basic needs in the form of soil. Therefore what is needed is corrective justice or *positive discrimination*, which aims to give more attention to the groups that are most disadvantaged because of the difference in initial capital, so that the relative balance can be achieved. "See also in Maria SW Sumardjono, *Between land law policy Regulation and Implementation*, Kompas Book Publisher, Jakarta, June 2001, revised edition, 5th edition, October 2007, p. 49-50... required a variety of activities that can be used to achieve efficiency and economic growth, social justice, environmental preservation and sustainable land use patterns... according to the author not only is needed but also required changes or replacement (*rule breaking*) on *stelsel negative publicity* (impure) underlying the policies of land law which have an impact not achieve social justice, so that the principle of land for the welfare and prosperity of the community difficult to achieve, because the choice *stelsel negative publicity* (impure) unresponsive to interests of the people.

¹⁴Sayyid Sabiq, *Source of Islamic Power*, the translation of Salim Bahreisy and Said Bahreisy Surabaya, Bina Ilmu, 1980, p. 198. see also JS Badudu and Sutan Mohammad Zain, *Indonesian General Dictionary Jakarta: Pustaka Sinar Harapan*, 1996, page 8..... Justice is one of the basic human values. Getting justice is a human right for every human being. Fair is impartial, honest, impartial and even. Justice contains elements of honesty, straightness, sincerity that is not biased.

liberty, honor, blood and treasure object with road uphold truth and justice in among others. Upholding truth and justice in a society led to the tranquility and sense secure in life everyday and trust that lead forth between the government and the people, in addition to growing prosperity and welfare. In a safe, orderly and calm atmosphere, each party can work with all their energy, mind and heart devote themselves to the interests of the country and its inhabitants without worrying about being impeded by their business or being hindered by their activities.

Justice is something that is felt balanced, appropriate, so that all people or most great people who experience feel worthy. One of the characteristics of justice which the most important is the balance between rights and obligations. Adil is standing in the middle between the two cases, give each person what that he is entitled to receive it ^[15].

The Source of concepts of justice possession, usage of Land, ownership and use of land is very closely related to the concept of religious, where the land is regarded as the provision of the Lord, to every creature of his life, a concept so in accordance with the concept of the law of nature, so that the land is a right for every human being, or more precisely every human being has the right to live on the land, every human being has the right to nature on land, as well as the right to life of other such rights on clothing, food and board. Soil is the right natural for every creature living and the concept kedilan which is given by God Almighty.

In the subjective concept of state laws that set out in the Act of the State of the Republic of Indonesia in 1945 article 1 paragraph 3 be a guideline specifically community in presenting a system state that is accommodating to the development of society. Results of the end of the concept of the state of law are then translated by Gustaf which is subjective into a form of justice, expediency and certainty that can be accepted by any society ^[16].

The value of expediency, certainty and justice has always been a source of debate over the interpretation of truth in the doctrines of legal experts in putting where the real law is located. In Muhammad Erwin's view which was written in his book entitled *Legal philosophy of critical reflection on law*, the meaning of law is actually an independent and dignified nature which means that in enforcing the law it is obliged to side with justice, namely justice for all. Therefore, if the rule of law may apply the value of justice, would have been the implementation of the functions of law are carried out by way of thinking is philosophical.

Understanding of justice according to the Big Indonesian Dictionary is; 1. equal weight, not heavy door, do not take sides; 2. Siding with the right, holding on to the truth; 3. Appropriate, not arbitrary. Justice :nature (actions, treatments, etc.) are fair ^[17].

We can not deny that law has become a very important instrument for people's lives. So it is not surprising that

¹⁵Baharuddin Iopa, *Al-Qur'an and Human Rights*, Bina Ilmu, Surabaya, 1980, p. 157.... Justice in law is justice that can bring about peace, happiness and calm in a natural way for the community. Justice in law can be seen clearly in practice, among others if judges' decisions handed down by law enforcement officials have been able to provide a sense of peace, happiness and tranquility for the community and are able to foster public opinion that the judge's decision was fair and reasonable.

¹⁶Soegianto, <https://pengwiliLandCertificateMakerjateng.org/news-7-pendaftaran.tanah.yang.menuhi..rasa.adadanan.html> internet access on October 25, 2018

¹⁷ Language Center Ministry of National Education, 2002, *Large Indonesian Dictionary*, Balai Pustaka, Jakarta, p. 8.

some countries place the law at the top (supremacy of law). Country us, Indonesia is based on the constitution in 1945 becoming one of the countries that put the law on a position that is the highest. As a consequence, Indonesia as a legal state is one of them in running its government system must adjust to the positive law in force. Then have a reasonable law holds a role that is very strategic as a foundation and strategy of the country to achieve the goal, as that has been specified in the preamble of the constitution of 1945 [18].

Plato stated that the implementation of governance that is good is that is governed by law, whereas in the book are titled *Laws*; the state must be governed by a head of state who is subject to the rules in force [19], this is in line with the opinion of Aristotle in his *Politics*, which also formulate that a country that is good is a country that is ruled by the constitution and the rule of law [20]

In understanding the state of law that can be seen that the essence of law that alone which becomes the deciding factor of everything. Aristotle also argued that law can only be established in relation to justice. So according to him, the purpose of the law of most main is realizing a justice, so that it automatically state laws also oriented on justice for its people [21].

Aristotle's view of justice can be found in his work "*nichomachean ethics, politics and rhetoric*". Specific seen in books *nichomachean ethics*, the book was entirely devoted to the justice that is based on the philosophy of the law of Aristotle, although regarded as the core of the philosophy of the law, "*because law only be defined in relation to justice*" [22]. In essence view of justice is as granting the right to equality but not similiarity. Aristotle distinguished his equal rights according to proportional rights. Similarity proportionally give each person what that be right according to ability and achievement that has been done. furthermore, justice according to the views of Aristotle divided into two kinds of justice, namely :

1. Distributief Justice: Justice Distributief is justice that gives to each of the portions according to his achievements.
2. Commutatief Justice: Justice Commutatief give the same amount to every person without distinction of achievement in terms of this relates to the role of the exchange to exchange goods and services.

Meanwhile, according to Hans Kelsen in his "*General theory of law and state*" view that the law as an order social which can be declared unfair if it can set the action of man in a way that is satisfying to be able to find happiness in it [23].

This justice theory from Hans Kelsen are; first about justice and peace. Justice comes from the ideals of the irrational. Justice rationalized through knowledge that can be tangible

an interests that ultimately give rise to a conflict of interest. Settlement on conflict of interest that can be achieved through an arrangement that satisfy any of the interests at the expense of the interests of others or by trying to reach a compromise towards a peace for all interests [24].

The second theory from Hans Kelsen is about justice and legality. To enforce the above basic one that is solid from an order of social particular, according to Hans Kelsen sense of justice as means of legality. A general rule is fair if it really is applied, while it is a rule commonly it is said is not fair if applied on a case and does not apply in the case of similar other [25].

Theories of justice and legality of these are applied in a law nation of Indonesia who interpret that rule of law nationally can be used as an legal standing (law umbrella) for the rules of law nationwide more appropriate level and rank and rule of law that has the power belt of the materials that loaded (material charge) in the rule of law are.

The ultimate goal of law is justice. By because it is, all businesses are related to the legal absolute should be directed to find a system of law that is most suitable and in accordance with the principles of justice. The law must be closely intertwined with justice. Law is a law that is fair. When a law of concrete, ie; legislation is contrary to the principles of justice that the law was not to be normative longer and not be able to say as the law again. The law only becomes law if it meets the principles of justice. In other words, justice is a constitutive element of all notions of law [26].

Justice is a value virtues are supreme, "*justice is the supreme virtue harmonizes the which all other virtues*". Besides that, the philosophers of Greece saw justice as a goal the continuous and constant to give to each person his rights, "*justice is the constant and continual purpose roomates Gives to everyone his own*". Some figures in them is Thomas Aquinas, he said, that the essence of the law is justice, by because the law must contain a justice. Law that is not fair is not the law.

Justice Legal or referred to also as justice in law is a relationship of justice between the citizens of the State of the country and the problem is the wargalah which shall meet justice in the form of obeying regulatory legislation which applies in the State. Justice and law are the general spiritual substance of the community that makes and becomes a unity. In a just society every person carries out work according to his basic nature best suited to him (*the man behind the gun*) it is called moral justice.

The values of justice must be the basis that must be realized in living together with the state to realize the State's goal, namely to realize the welfare of all its citizens and protect all citizens and their territories, educating all citizens. Likewise, the values of justice as a basis in association between countries of the nations of the world and the principle of wanting to create order to live together in a relationship between nations of the world based on a principle of independence for each nation, lasting peace and justice in living together (social justice). The realization and protection of justice in living together in a nationality

¹⁸ Marwan Effendy, 2014, "*Legal Theory*", Lectures on Doctoral Program (S3) in Law at the Faculty of Law, Airlangga University, Surabaya, Jakarta, p.3.

¹⁹ Plato in Mohammad Tahir Azhari, 1992, "*Rule of Law: A Study of The Principles Viewed from the Terms of Islamic Law. Its Implementation in the Period The State of Medina and the Present*", Bulan Bintang, Jakarta, p. 73-74.

²⁰ Aristotle in George Sabine, 1945, "*A History of Political Theory*", George G.Harrap & Co. Ltd... London, p. 92.

²¹ *Ibid*

²² Marwan Effendy, *Op. Cit.*, p. 23

²³ Hans Kelsen, 2008, "*Basics of Normative Law*", Nusa Media, Bandung, p. 7

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ Theo Huijbers, 1995, "*Philosophy of Law in the Path of History*", Kanisius, Yogyakarta, p. 70.

requires the State to create a statutory regulation ^[27]. In this sense, a national nation with a social justice must be a state based on law. So as a rule of law, three basic conditions must be met, namely: *First*, recognition and protection of human rights; *Second*, free and impartial justice and equality; *Third*, legality in the sense of law in all its forms. Pancasila as the source of national law of the Indonesian nation, has the highest position, so that any statutory regulations made and enforced must not conflict with the values of the five precepts in Pancasila. Justice in the values of the Regulations made and enforced must be social justice as referred to in the meaning and values contained in the fifth precepts of the Pancasila.

Based on the theory of *Stufenbau* from Hans Kelsen can be used to justify this with the assumption that there is a *Grundnorm*, in this case the Pancasila which is at the top of the levels or categories below it. *Grundnorm* is like a fuel that moves the entire system ^[28], and result in one another binding and complementary. By Satjipto Rahardjo, based on Hans Kelsen's *Stufenbau* theory, the higher the position in the normative order, the richer the moral content or general principles and the lower the position, the more concrete and thinner the moral content is ^[29].

Based on the theory basically Hans Kelsen, that the implementation can be used to measure the level of synchronization of product laws are scattered and relates directly to the initiation of a draft law. In theoretically according to the "*Stufenbau des Rechts*" theory of Kelsen, as also Hans Nawiasky refer to the term "*Die Stufenordnung der Rechtsnormen*" saying that the legislation that has a level of order that is composed, ranging from the top to to lower the consists of 4 (four) groups ^[26], Namely :

Group I	<i>Staats fundamentalnorm</i> (fundamental norms of the country)
Group II	<i>Staats Grundgesetz</i> (rule base / rules principal countries)
Group III	<i>Formell Gesetz</i> (Formal Law)
Group IV	<i>Verordnung & Autonome Satzung</i> (rules implementing and rules autonomous)

Jazim Hamidi asserts that the norms of fundamental state is a norm which is the highest in a country that is not shaped by the norms of others. Norma is defined more in advance by the public ; Rules base / rules staple state is a rule that is fundamental, it is still common and still in the line of great and still the norm single that has not accompanied the norm secondary. An Act is formally a norm that is concrete, detailed and directly applicable to the public and no longer contains the single norm, besides the addition unbiased norm primer can also be made with the norms of sanctions and sementera regulations implementing function organizes the provisions of the Act ^[30].

The Power to bind to each regulation by hierarchically, then

the principle of the law of *lex superior derogat legi inferiori* is in effect. This means that the provisions of the more higher the education level, has a strength which is high when compared with the stipulation that more low hierarchically. Can also be interpreted when going on provisions that more low education level, did not correspond, contradictory or not in the same breath with the provisions of the more higher the education level, the provision which is lower in the same breath with the provisions of the more higher the education level, the provision which is lower does not have the power of binding because it does not obey the principle.

Based on the theory of "*Stufenbau des Rechts*" of Hans Kelsen, the author can draw the conclusion that any decision / determination of the judge, including the decision / determination Judge Court of Commerce should refer to and unfounded and not be contrary to the rules which is high above, in particular not be contrary with Pancasila as the *Staats fundamental* norm (state fundamental norm). If not unfounded or even contrary to the regulations are much higher above specifically contrary to Pancasila as *Staats fundamentalnorm* (norm fundamental state) then the decision / determination of judges that can be canceled and invalidated by- law and do not reflect justice, especially justice with dignity that is based on Pancasila ^[31].

Justice according to Pancasila is interpreted as recognition and equal treatment between rights and obligations. Justice in Pancasila must also always think of a harmonious relationship between individuals and groups in social life, it is to realize justice in civilized human life. Social justice in the fifth principle of Pancasila in essence, justice is concerned with the interests of society and groups, thereby reducing the right to individual freedom ^[32].

Our National Law regulates justice for all parties, so that justice according to Indonesian Law imbued with Pancasila values is justice that maintains the harmonization of general justice with individual justice. Indonesian Legal Justice is a form of justice that emphasizes a pattern of balance between individual rights and social obligations ^[33].

In the theory of justice, if the end result is independence with dignified dignity, in its fulfillment it creates a very complicated problem. One of the issues that can be reviewed by fulfilling a sense of justice is the issue of land registration.

If seen from the substance of the law, the principle of registration of land not only mere possession of a certificate of land alone. Regarding fairness in registration of land are the issues raised which include the acquisition and use of land, utilization of source power of agrarian, ownership, procedures, and so on, are surely things that all require the values of justice when it is run.

In running the government, state officials use the law as an instrument to realize the goals of the state. Law is an important part in upholding *good governance*. Every weakness of the system of law would give influence on the performance of government as a whole, because *good governance* not be able to run with either the laws are weak.

²⁷ Kaelan, *Pancasila Nationality State Cultural, Historical, Philosophical, Juridical, and Actualization*, Yogyakarta, Paradigm, 2013, p. 340.

²⁸ Achmad Ali, *Revealing the Veil of Law: A Philosophical and Sociological Study*, Jakarta, Gunung Agung, 2002, p. 273.

²⁹ Satjipto Rahardjo, *the position of the Basic Law*, Yogyakarta Genta Publisher Publishing, 2009, p. 26

²⁶ Jazim Ham i di, *Formation of Laws and Regulations in the Highlights of Law Number 10 Year 2004*, Tata Nusa, Jakarta, 2006, p. 4-5.

³⁰ *Loc. Cit.*

³¹ Agus Winoto, *Reconstruction Of Peace Approval (Homologation) In Banking Law, Related To Justice Of Justice*, Dissertation, Doctoral Program (S-3) Legal Studies, Faculty of Law, Sultan Agung University of Semarang, 2016, p. 276

³² *Ibid*, hlm. 389.

³³ *Ibid*, hlm. 550.

Strengthening the system of law or reform law is a necessity absolute for the realization of *good governance*. Law when it is regarded as a commodity rather than institute enforcement of justice and the capitalist others. The fact is that create distrust and disobedience to the law by the public.

Embodies the concept of *good governance* can be done by achieving a state of the good and the synergy between the government, the sector private and society civil in the management of resources of natural, social, environmental and economic. Prerequisites minimum to achieve *good governance* is their transparency, accountability, participation, empowerment law, effectiveness and efficiency, and fairness. Policies public are issued by the government must be transparent, effective and efficient, and capable of answering the provisions of basic fairness. As a form of good state governance, community involvement at all levels of the decision-making process must be involved.

The concept of *good governance* can be interpreted into a reference to the process and structure of the relationship of political and social economy are good. Human interest is a factor of the strongest that when it affects both poor and is reached or whether a country and government are good. Already become a part of life that is not able to be separated that every human being has interests. Both the interests of individuals, groups, and / or the interests of national and even international communities. In the context of realizing each of these interests, conflicts always occur. So also in the realization of what the name is "*good governance*" conflict of interest is always opposed to the primary. Interest creates distance and boundaries between individuals and groups that make it difficult to reach the word "agreement".

Good governance at essentially is a concept that refers to the process of achievement of the decision and its implementation that can be accounted for as a joint. As a consensus that is reached by the government, residents of the state, and the sector private to the implementation of governance in a country. State acts provide services for the sake of the welfare of the people with the system of justice that is good and the system of government that can dipertanggungjawabkan to the public. Aiming at 3 (three) pillars of sustainable development.

In economic development, the environment, and human development. *Good governance* touching the 3 (three) parties, namely the government (the organizer of the state), the corporate or the world of business (driving the economy), and the society civil (find compatibility). Third parties are mutually role and influence in the organization of the country well. Synchronization and harmonization between the parties are becoming answers big. But with the state of Indonesia when it was still difficult to be happening. Indonesia is one of the countries in the world that is struggling and longing for clean and *good governance*. To achieve *good governance* in the system of government in Indonesia, the principles of *good governance* should be established in various institutions important rule, prinsip principles that include : Participation of society, upholding the rule of law, transparency, caring and stakeholders, berorientas on consensus, equality, effectiveness and efficiency, accountability, and the vision of the strategic, so what are coveted Indonesia into a country that is *Clean and good governance* can be realized and the loss factors of interest politics, corruption, justice that is not fair, working on outside authority, and the lack of integrity and

transparency are some problems that make governance that both still have not been able to be achieved.

Peoples and governments are still contradictory in which it is to overcome the problems it is supposed to establish the harmonization and cooperation to overcome the problems that exist. *Good governance* as an effort to achieve the government are well reflected in the various fields that have a role that peting in motion the wheels of government in Indonesia, which includes : the field of political, economic, social, and legal sector.

5. Closing

5.1 Conclusion

The ideal concept of implementing Good Governance Principles in the process of Land Registration by Land Certificate Maker based on Justice Values, the principles of good governance should be upheld in various important government institutions, these principles include: Community participation, upholding the rule of law, transparency, care, and stakeholders, oriented on consensus, equality, effectiveness and efficiency, accountability, and strategic vision, so that what Indonesia desires to be a Clean and good governance country can be realized and the loss of factors of political importance, Corruption, unfair justice, work outside the authority, and lack of integrity and transparency are some of the problems that make good governance unachievable. Communities and governments that are still opposed to overcoming these problems should establish harmonization and cooperation in overcoming existing problems. Good governance as an effort to achieve good governance is reflected in various fields that have an important role in the movement of government in Indonesia which includes: political, economic, social and legal fields.

5.2 Suggestion

Land Certificate Maker in carrying out their duties and positions always hold fast to be guided by the provisions of the applicable law. Be careful and vigilant in examining and examining letters / documents and documents provided by the parties facing them. Besides, he must also really pay attention to the attitudes and words of the parties by asking as many questions as possible and asking them to talk about the letter / deed that will be made by the Land Certificate Maker. Changes in the constructivism paradigm with the ideal construction of the position of Land Certificate Maker in Land Registration in Indonesia based on Fair Value. In addition it is necessary to use the apparatus own feelings to sharpen their confidence.

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