

## Political Law of Jokowi's Government Land Registration

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**ABSTRACT :** This study aims to answer and describe how the legal politics of land registration during the reign of Joko Widodo (President Jokowi). This legal research was conducted normatively using secondary data mainly, namely: Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles; Government Regulation Number 24 of 1997 concerning Land Registration; Regulation of the Minister of ATR / Head of BPN RI Number 6 of 2018 concerning the land registration of complete system; and Indonesian Presidential Instruction Number 2 of 2018 concerning the Acceleration of the land registration of complete system in the Entire Territory of the Republic of Indonesia. This study concludes, the Jokowi's government land registration policy is oriented to the presence of the state in providing legal certainty of land ownership rights and increasing the status and standard of living of low-income people, while the statutory regulations regarding land registration in this case the land registration of complete system (PTSL) issued by the Jokowi's government directed in the context of accelerating PTSL. Including by facilitating the ease of processes / procedures and financing / fiscal policies in the implementation of PTSL.

**KEYWORDS** - Land Registration, Political Law, the Land Registration of Complete System

### I. INTRODUCTION

#### 1.1. Background

Since the 1980s, the Indonesian government has been promoting the land certification program (in Indonesian it is called "Program Sertifikasi Tanah", abbreviated as "PST") as a national strategy to facilitate national development. This promotion has been carried out by compiling national programs such as the National Agrarian Operations Project (PRONA) in 1981 and the People's Service for Land Certification (LARASITA) in 2006, which was launched by the National Land Agency (BPN) to facilitate PST in urban and rural areas in Indonesia (Wahid, F., et.al., 2015).

In the last three years (2014-2017), the Indonesian government in the era of President Joko Widodo was increasingly active in promoting PST by fixing expensive and ineffective bureaucracy (Ibid.) President Jokowi targeted that by 2025 all land in Indonesia had been certified (<http://www.tribunnews.com/nasional/2017/12/28/pastikan-program-sertifikat-tanah-lancar-jokowi-pokoknya-saya-kejar-terus>, accessed on 18 August 2018).

President Jokowi stated that the more certificates handed over, the wider the public's access to financial services. So that the impact will spur economic growth, alleviate poverty, and reduce the level of inequality in both the city and regional centers (<http://ekonomi.kompas.com/read/2018/01/19/113000226/presiden-siap-serahkan-7-juta-sertifikat-tanah-di-2018>, accessed on 18 August 2018).

On the other hand, President Jokowi revealed that every time he came to the area of complaints that came in was a matter of land disputes, both the community with the government, the community with SOEs, the community with the community, neighbors with neighbors and fathers and children. According to him, this happened because the people had not yet held a certificate (<https://bisnis.tempo.co/read/1039401/program-sertifikasi-tanah-jokowi-biar-tak-berantem-terus>, accessed on 18 August 2018).

Making regulations and implementing land registration in the Jokowi government is called "The Land Registration of Complete System (in the Indonesian language is called "Pendaftaran Tanah Sistem Lengkap,

abbreviated "PTSL"). PTSL program is intended so that by 2025 all land in Indonesia has been certified with the priority of low-income people.

PTSL is actually a systematic land registration, which is preferred because in this way accelerated data acquisition on plots of land to be registered rather than through sporadic land registration (Boedi Harsono, 2005: 475).

Based on this, the researcher is interested in researching, "The Political Law of Jokowi's Government Land Registration: The Land Registration of Complete System."

### 1.1. Research Question

Based on the above background, the researchers formulated the problem: how was the legal politics (political law) of land registration during the administration of President Joko Widodo (President Jokowi)?

## II. METHOD

### 2.1 Type of research

This research is a normative study by conducting library research or secondary data (Soekanto, Soerjono and Mamudji, Sri, 2004: 13). The nature of this research is descriptive research that aims to describe in full the characteristics of a situation, personal behavior and group behavior, and to determine the frequency of a symptom (Soekanto, Soerjono, 1982: 49, 53, and 96). This study illustrates the legal politics of the Jokowi's government land registration known as the land registration of complete system.

### 2.2 Research Materials or Data

Soerjono Soekanto describes secondary data including primary legal materials, secondary legal materials and tertiary legal materials. Primary legal material is binding legal material, namely legislation (1945 Constitution of the Republic of Indonesia 1945 and so on), customary law, jurisprudence and treaties. Secondary legal materials are legal materials that provide an explanation of primary legal materials such as draft laws, research results, work from legal circles and so on. Tertiary legal materials are legal materials that provide instructions and explanations for primary legal materials and secondary legal materials, such as encyclopedias, cumulative indexes, and so on (Soekanto, Soerjono and Mamudji, Sri, 2004: *Op.Cit.*, 13-14; Soekanto, Soerjono, 1982: *Op.Cit.*, 52).

This legal research was conducted normatively using secondary data mainly, namely: (1) Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles; (2) Government Regulation Number 24 of 1997 concerning Land Registration; (3) Regulation of the Minister of ATR / Head of BPN RI Number 35 of 2016 concerning the Acceleration of the Implementation of the land registration of complete system; (4) Regulation of the Minister of ATR / Head of BPN RI Number 01 of 2017 concerning Amendment to the Regulation of the Minister of ATR / Head of BPN RI Number 35 of 2016 concerning the Acceleration of Implementation of the land registration of complete system; (5) Regulation of the Minister of ATR / Head of BPN RI Number 12 of 2017 concerning the Acceleration of the land registration of complete system; (6) Regulation of the Minister of ATR / Head of BPN RI Number 6 of 2018 concerning the land registration of complete system, and (7) Indonesian Presidential Instruction Number 2 of 2018 concerning the Acceleration of the land registration of complete system in the Entire Territory of the Republic of Indonesia.

### 2.3 Research Data Analysis

Data analysis or analysis of results is related to ways of analysis, namely how to utilize the data collected to be used in solving research problems (Sumardjono, Maria S.W., 1989: 24).

Secondary data are analyzed using legal political theory to illustrate how the legal politics of the Jokowi government land registration, that is, the land registration of complete system. The politics of land registration law in this analysis is defined as the formation and implementation of the land registration law carried out by President Jokowi in the framework of providing legal certainty and protection for the Indonesian people who hold land rights in Indonesian territory.

### III. RESULTS

#### 3.1 Jokowi's Government Land Registration Policy in the 2015-2019 Medium-Term Development Plan

The Jokowi government set the 2015-2019 midterm national development agenda as an operational translation of Nawa Cita. The national development agendas, namely: (1) bringing back the state to protect the entire nation and providing security to all citizens; (2) developing clean, effective, democratic and reliable governance; (3) developing Indonesia from the periphery by strengthening regions and villages within the framework of a unitary state; (4) Strengthening the state's presence in carrying out system reforms and law enforcement that are free of corruption, dignified and trusted; (5) improving the quality of life of Indonesian people; (6) increasing people's productivity and competitiveness in international markets; (7) realizing economic independence by moving the strategic sectors of the domestic economy; (8) revolutionizing the nation's character; and (9) strengthen policy and strengthen Indonesian social restoration. Each agenda is broken down according to priorities that are complemented by a description of the objectives, direction of policy and strategy (Ministry of National Development Planning / National Development Planning Agency, 2014: 6-1).

The Jokowi government land registration policy is put as a medium-term national development agenda 2015-2019.

First, as an agenda to strengthen the presence of the state in reforming the system and law enforcement that is free of corruption, dignified and trusted with priority sub-agenda to ensure the legal certainty of land ownership rights.

In the agenda of strengthening the presence of the state in reforming the system and enforcing law that is free of corruption, dignified and trusted, the Jokowi government compiled priority sub-agenda, among others, to guarantee legal certainty of land ownership rights (*Ibid.*, 6-50).

To ensure legal certainty of land ownership rights, the Jokowi government has set targets for the 2015-2019 land sector, namely (i) Coverage of the Basic Land Map reaches up to 60 percent of the national non-forest land area (national territory); (ii) Coverage of certified parcels reaches 70 percent of the national territory; (iii) Implementation of the determination of forest area boundaries at a scale of 1: 5,000 and integrate it with the land registration system at the National Land Agency for 189,056.6 km; and (iv) Socialization of customary / ulayat land legislation in 34 provinces and 539 districts / cities (*Ibid.*, 6-61).

The Jokowi government has identified that the fundamental problem is that the current land registration system is a negative publication system with the state not guaranteeing the truth of the information contained in the certificate. For this reason, the Jokowi government needs to change its land registration system policy by establishing a positive public land registration system known as Positive Stelsel Land Registration, which means that the state guarantees the truth of the information contained in the published land certificate, which in turn if a lawsuit occurs, the injured party will get compensation from the state.

The strategy adopted by the Jokowi government, through: (i) Improving the quality and quantity of georeference through the provision of a basic map of land; (ii) Speed up the completion of land certification; (iii) Increasing certainty of forest and non-forest boundaries; and (iv) Improving the ability of regional governments to carry out their roles in the formulation of Regional Regulations related to the settlement of customary / ulayat lands (*Ibid.*, 6-62).

Second, as an agenda to improve the quality of life of Indonesian people and people with a priority sub-agenda to improve the welfare of the marginal people: the implementation of the Indonesia Work program.

The Jokowi government set targets in the framework of the distribution of farmers' land rights as follows (*Ibid.*, 6-80 and 6-81):

1. Provision of Land Resources for Agrarian Reform Objects (TORA) and land redistribution and legalization of assets.

a. Identification and inventory of Land Tenure, Ownership, Use and Utilization (IP4T) of 18 million plots or at least 9 million ha;

b. Identification of forest areas to be released at least 4.1 million ha;

c. Identification of land rights, including HGU land will expire, abandoned land, and uncertified transmigration land, which has the potential to be a TORA of at least 1 million ha; and

d. Identification of community-owned land with criteria for receiving Agrarian Reform to legalize assets of at least 3.9 million ha.

2. The granting of land rights (asset reform) which includes redistribution of land and the legalization of assets of 9 million ha with details: (i) redistribution of land of at least 4.5 million ha covering the forest area released, and land rights, including inside the HGU land will expire and abandoned land; and (ii) the legalization of assets of at least 4.5 million ha, which includes land that has not been legalized transmigration and the legalization of assets (certification) of the community with criteria for receiving agrarian reform. Specifically in 2015, the target was 100,000 Ha.

The Jokowi government sets the direction of agrarian reform policies carried out through land redistribution, legalization of assets (land certification), while at the same time complementing community empowerment assistance for low-income people who need mainly farmers, fishermen, small and medium-sized businesses (SMEs), and low-income communities ( MBR).

To achieve this, the Jokowi government undertook strategies including: (i) coordinating land redistribution locations and legalizing assets with community empowerment programs; (ii) development of agricultural technology and processing of agricultural products; (iii) the establishment and strengthening of microfinance institutions; and (iv) establishing connections between farmers' businesses and SMEs with the industrial world (*Ibid.*, 6-81).

Third, as an agenda to improve the quality of life of people and people of Indonesia with a priority sub-agenda to improve people's welfare through sustainable livelihoods.

The Jokowi government directs the policy of optimizing production assets adequately for the underprivileged people as basic capital for livelihood development with a strategy of optimizing the results of distribution of land ownership rights through land ownership programs, especially for smallholders selectively, accompanied by adequate coaching as a source of livelihood that is worthy (*Ibid.*, 6-84).

Fourth, as realizing economic independence by moving the strategic sectors of the domestic economy with a priority agenda of increasing food sovereignty.

The Jokowi Government sets the policy direction for improving the welfare of the main actors producing food, among others through improving access and assets of farmers, fishermen, fish farmers, and salt farmers to land through the distribution of land rights of farmers through land reform and land tenure programs for agriculture, especially for small farmers and farm laborers (*Ibid.*, 6-154).

Fifth, as realizing economic independence by moving the strategic sectors of the domestic economy with the priority sub-agenda of maritime and marine economic development.

The Jokowi government provides policy directions to improve the dignity and standard of living of fishermen and coastal communities, among others through strategies to increase production and productivity of small-scale fishing businesses, traditional fish farmers and salt farmers through: (i) providing a cheap, easy and affordable source of funding. accessible for the development of marine and fisheries business; (ii) the establishment of a system and institutional guarantor for fisheries actors and businesses; (iii) development of facilitation for marine and fisheries business credit, and development of fishermen insurance; and (iv) facilitating the certification of the land of fishermen, fish farmers, and salt farmers (*Ibid.*, 6-179).

The Jokowi's government policy on land registration in this case the land registration of complete system (PTSL) as described above can be concluded in principle as a land registration policy directed:

(1) ensure legal certainty of land ownership rights by changing the policy of the land registration system from the negative public land registration system by establishing a positive public land registration system known as Positive Stelsel Land Registration. This means that the state guarantees the truth of the information contained in the land certificate issued and if a lawsuit occurs, the injured party will receive compensation from the state;

(2) in the context of land redistribution, legalization of assets (land certification), complemented by community empowerment assistance for low-income people who need especially farmers, fishermen, small and medium-sized businesses (UKM), and low-income communities (MBR);

(3) optimize the results of distribution of land ownership rights through land ownership programs, especially for smallholders; and

(4) increasing access and assets of farmers, fishermen, fish farmers and salt farmers, especially for smallholders and farm laborers in the distribution of land rights; and (5) enhancing the dignity and standard of living of fishermen and coastal communities, among others through facilitating the certification of fishermen's land, fish cultivators, and salt farmers.

Thus, the Jokowi's administration's land registration policy is oriented to the presence of the state in providing legal certainty of land ownership rights and improving the status and standard of living of low-income people.

### 3.2 Jokowi Regulation of the Jokowi's Government Land Registry

In the field of land registration, the Jokowi's government has issued a number of laws and regulations as a manifestation of the established land registration policy.

During Jokowi's reign, the laws and regulations regarding the registration of land that had been born, included:

- 1) Regulation of the Minister of ATR / Head of BPN RI Number 35 of 2016 concerning the Acceleration of the Implementation of the land registration of complete system;
- 2) Regulation of the Minister of ATR / Head of BPN RI Number 01 of 2017 concerning Amendment to the Regulation of the Minister of ATR / Head of BPN RI Number 35 of 2016 concerning the Acceleration of Implementation of the land registration of complete system;
- 3) Regulation of the Minister of ATR / Head of BPN RI Number 12 of 2017 concerning the Acceleration of the land registration of complete system
- 4) Regulation of the Minister of ATR / Head of BPN RI Number 6 of 2018 concerning the land registration of complete system, and
- 5) Indonesian Presidential Instruction Number 2 of 2018 concerning the Acceleration of the land registration of complete system in the Entire Territory of the Republic of Indonesia.

The Jokowi's Government in regulating the land registration of complete system (PTSL) through the Minister of ATR / Head of BPN RI has issued Ministerial Regulation ATR / Head of BPN RI Number 35 of 2016 concerning the Acceleration of Implementation of the land registration of complete system (Regulation of the Minister of ATR / Head of BPN RI 35/2016) which then amended by Regulation of the Minister of ATR / Head of BPN RI Number 01 of 2017 concerning Amendment to the Regulation of the Minister of ATR / Head of BPN RI Number 35 of 2016 concerning the Acceleration of Implementation of the land registration of complete system (Regulation of the Minister of ATR / Head of BPN RI 01/2017).

Following the issuance of the Regulation of the Minister of ATR / Head of BPN RI Number 12 of 2017 concerning the Acceleration of the land registration of complete system (Regulation of the Minister of ATR / Head of BPN RI 12/2017), then Regulation of the Minister of ATR / Head of BPN RI 35/2016 as amended by Regulation of the Minister of ATR / Head of BPN RI 01/2017 has been revoked and declared invalid.

Furthermore, Regulation of the Minister of ATR / Head of BPN RI Number 6 of 2018 concerning the land registration of complete system (Regulation of the Minister of ATR / Head of BPN RI 6/2018) has revoked and stated that it is not applicable Regulation of the Minister of ATR / Head of BPN RI Number 12 of 2017 concerning the Acceleration of the land registration of complete system (Regulation of the Minister of ATR / Head of BPN RI 12/2017).

Thus, praxis related to the land registration of complete system (PTSL) refers to Regulation of the Minister of ATR / Head of BPN RI Number 6 of 2018 concerning the land registration of complete system (Regulation of the Minister of ATR / Head of BPN RI 6/2018).

Before the enactment of Regulation of the Minister of ATR / Head of BPN RI 6/2018, President Jokowi had issued instructions on the acceleration of the land registration of complete system (PTSL) in all regions of the Republic of Indonesia. Namely Indonesian Presidential Instruction Number 2 of 2018 concerning the Acceleration of the land registration of complete system in the Entire Territory of the Republic of Indonesia (Indonesian Presidential Instruction 2/2018).

Thus, the issuance and application of Regulation of the Minister of ATR / Head of BPN RI Number 6 of 2018 concerning the land registration of complete system (Regulation of the Minister of ATR / Head of BPN RI 6/2018) also refers to Indonesian Presidential Instruction Number 2 of 2018 concerning the Acceleration of

the land registration of complete system in the Entire Territory of the Republic of Indonesia (Indonesian Presidential Instruction 2/2018).

Indonesian Presidential Instruction 2/2018 instructs the relevant line ministries in this matter the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency; Minister of Environment and Forestry; The Minister of Public Discipline and Public Housing; Minister of Home Affairs; Minister of State-Owned Enterprises; Minister of Finance; Minister of Villages, Development of Disadvantaged Areas, and Transmigration; Chief of Police of the Republic of Indonesia; Attorney General of the Republic of Indonesia; Head of Government Goods and Services Procurement Policy Institute; Head of the National Aeronautics and Space Agency; Head of Geospatial Information Agency; Governors; and Regents / Mayors.

Indonesian Presidential Instruction 2/2018 instructs to take the necessary steps in accordance with the duties, functions and authorities of each in the framework of implementing the land registration of complete system (PTSL) acceleration in all regions of Indonesia.

Indonesian Presidential Instruction 2/2018 also emphasizes the financing of the land registration of complete system (PTSL). First, for State-Owned Enterprises (SOEs) to allocate PTSL support programs in their work plans and budgets for Social and Environmental Responsibility (*Corporate Social Responsibility*) with due regard to company capability and good corporate governance (*Good Corporate Governance*) and statutory provisions. And second, for the Minister of Finance to support the acceleration of PTSL owned by private individuals through the provision of natural fiscal policy facilities in the framework of acceleration which can be in the form of relief from the burden of the community on Stamp Duty and Income Tax in accordance with statutory provisions.

The Regulation of the Minister of ATR / Head of BPN RI 6/2018 basically regulates the substance / material previously stipulated in the Regulation of the Minister of ATR / Head of BPN RI 12/2017 by perfecting the substance / material by adjusting to the provisions of laws and regulations governing land registration and other land provisions so that it is held the land registration of complete system (PTSL) throughout the territory of the Republic of Indonesia. In this case, especially regarding the substance / material outlined in Indonesian Presidential Instruction 2/2018.

Based on the above explanation it can be concluded that the legislation concerning land registration in this case the land registration of complete system (PTSL) issued by the Jokowi's government is directed in the context of accelerating PTSL. Including by facilitating the ease of processes / procedures and financing / fiscal policies in the implementation of PTSL.

#### **IV. CONCLUSION**

This study concludes, the Jokowi's government land registration policy is oriented to the presence of the state in providing legal certainty of land ownership rights and increasing the status and standard of living of low-income people, while the statutory regulations regarding land registration in this case the land registration of complete system (PTSL) issued by the Jokowi's government directed in the context of accelerating PTSL. Including by facilitating the ease of processes / procedures and financing / fiscal policies in the implementation of PTSL.

#### **V. Acknowledgements**

This research is funded by the Ministry of Research and Higher Education through the scheme of PDP for budget year 2018-2019; contract number Universitas Pamulang:150/A5/SPKP/LPPM/UNPAM/III/2019.

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