

## Ideal Concepts Implementation of Good Governance in the Land Registration Process by PPAT Based Justice Value

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### Abstract

*The administration of government based on the principles of good governance is the basis for formulating and implementing democratic state policies. Good governance is a conception of the administration of a clean, democratic and effective government by the ideals of the formation of civil society. Good governance is closely related to the contribution, empowerment and balance between the three pillars: 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 in the context of implementing land registration by PPAT as one of the parties who has the authority to carry out land registration, especially the maintenance of land data so that it can provide better services to the community. The results of the study indicate that the implementation of Good Governance in the Land Registration process by PPAT is based on the Value of Justice, then the principles of good governance should be enforced in various important government institutions. These principles include: Community participation, upholding the rule of law, transparency, care and stakeholders, -oriented, equality, effectiveness and efficiency, accountability, and strategic vision, so that what Indonesia desires becomes a country and good governance can be realized, and the disappearance of factors Political interests, KKN, unfair justice, working outside the authority, and lack of integrity and transparency are some of the problems that make good governance still not achieved.*

### Keywords

responsibility; land registration; good governance



### I. Introduction

In order to create an orderly land administration, Land Deed Officials are also required to send a monthly report regarding the deed he made no later than the 10th of the following month. This obligation is motivated by the government's intention to achieve the goal of land registration as referred to in Article 3 of Government Regulation Number 24 of 1997 which states that. Physical activity is an inseparable part of the life of living things, ranging from simple to very complex activities. As a living creature, humans need physical activity as an effort to maintain the existence of their lives. Every individual in his life must be doing physical activities both intentionally and unintentionally, because physical activities are carried out with diverse and diverse purposes. (Sulaiman, et al. 2020)

The physical and juridical data reported monthly by the Land Deed Making Officer support the government in providing information to the public who need land data. However, since Government Regulation 24 of 1997 clearly states the obligations the Land Deed Making Officer must carry out, professionalism is needed from the Land Deed Making Officer himself. Although Government Regulation Number 37 of 1998 has been

enacted, the provisions governing the duties, functions, roles and obligations of Land Deed Making Officials are not sufficient because the provisions regarding the positions of Land Deed Making Officials, which among others, regulate the appointment/appointment and dismissal Land Deed Maker Officials, obligations and rights of Land Deed Making Officials, Land Deed Officials protocols, as well as sanctions which include administrative sanctions, civil sanctions and criminal sanctions, but the provisions regarding the confidentiality of the Land Deed Making Officer's position, especially in accommodating the interests and providing protection with The law for service users of Land Deed Making Officials have not yet been regulated by statutory regulation.

The professionalism of the Land Deed Maker Official is very much required to keep the secret of the Land Deed Making Officer's position because matters relating to the confidential position of the Land Deed Making Officer are very meaningful and especially about trust (trust) between the public who use the services of the Land Deed Maker Official. with the Land Deed Making Officer so that in my opinion it is necessary to stipulate a regulation regarding the secret of the position of the Land Deed Making Officer.

The most important improvement effort is to reconstruct the public management system that allows creativity and innovation to grow and develop to form a strong organizational culture. Mandated by the 1945 Constitution, one of the goals of establishing the Republic of Indonesia is to realize general welfare. Therefore, one of the government's main tasks is to create a government management system that can properly manage national resources to achieve prosperity and welfare as well as social justice for all Indonesian people.

To realize public services in the field of government bureaucracy, forming the National Bureaucracy Committee Bureaucracy is needed, but sometimes it becomes an obstacle and source of problems for the development of democracy so that social justice for the people of Indonesia has not been achieved.

So far, what has happened in the practice of the bureaucratic land system is that there are many irregularities in the service of registration of land rights as well as other irregularities such as discrimination in bureaucratic services against the control, ownership, use and utilization as well as the granting of land rights, which discrimination usually occurs between officials and entrepreneurs? And the little people. Academically, the function of the bureaucracy and the state apparatus is problem-solving (source of the problem).

## **II. Review of Literature**

### **2.1 Theory of Justice**

Justice is one of the most widely discussed legal goals throughout the history of legal philosophy. Aristotle has written extensively on justice. He stated that justice is a policy related to human relations. Furthermore, Aristotle in his Rhetoric distinguishes justice in two types, namely distributive justice (*justitia distributiva*) as justice that gives to everyone based on their services or distribution according to their respective rights, and commutative (*justitia commutativa*) as justice received. by each member regardless of their respective services justice commutative is based on transactions (*sunallagamata*) whether voluntary or not.

## 2.2 Principles of Good Governance as Applied Theory

Governance has been known in the literature for almost 120 years since Woodrow Wilson introduced the field of study about 125 years ago; however, governance has only been used in managing corporate organizations and higher education institutions. Discourse on governance, especially after various international financial institutions required good governance in their various aid programs.

## III. Research Method

This research uses the Socio Legal, namely by conducting reciprocal research between the laws by examining the work of empirical/social law in examining the legal rules that apply in society specification of this research is Analytical Descriptive. Collecting data through primary data and secondary. The analytical method used is qualitative, and the presentation of the data is in the form of a written scientific report.

## IV. Result and Discussion

The reality of the bureaucratic land system is fictitious, characterized by tensions and conflicts between various social structures with different interests based on operations and exploitation, so the social justice aspired to by this state cannot be achieved. The quality of bureaucratic services is considered poor, long, convoluted, and discriminatory. It looks very contradictory if we compare it with private agencies that provide interactive, competitive and fast services. Reform of the bureaucratic system and BPN's public services are steps to improve the occurrence of political decay and the destruction of behaviour entrenched in the bureaucratic system.

In a negative publicity system, the benchmark for legal certainty is not "registration" but the validity of the "legal action" carried out, which determines the transfer of rights to the buyer. Registration does not make the person who acquires land from the rightful party the new right holder. In this system, the principle is known as *Nemo plus iuris*. This principle applies to Roman law, which is complete *Nemo plus iuris in alium* transferred *potest quam ipse* *abel*, meaning that people cannot transfer or release rights beyond what they have. So the data presented in the registration with a negative publication system should not be trusted to be true.

The state does not guarantee the truth of the data presented. Even after registering, the buyer always faces the possibility of a lawsuit from a party who can prove that he is the holder of the real right. An "acquisitive verjaring" institution overcomes the weakness of this system by countries that use it.

This publication system used by UUPA and PP No. 24/1997 is a negative system that Contains positive elements. The system is not negative because it is stated in Article 19, paragraph (2) letter c, that registration produces letters of proof of rights, which act as strong evidence. Likewise, it is stated in Article 23, paragraph (2). Thirty-two paragraphs (2) and 38 paragraphs (2). In a pure negative publicity system, there would be no such statement.

This statement implies that the Government as the organizer of land registration, must try as far as possible to provide correct data in the land book and registration map. So far, this cannot be proven and vice versa. The data presented in the land book and registration map must be accepted as correct data. Both in daily legal actions as well as in litigation in court. Likewise, what is contained in the title certificate, as long as the data is by what is in the land book and registration map.

Society must be understood from an individual perspective that makes up society, the individual 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, not congenital and is released (released).

Through the theory of interactionism symbolic these can be traced to the meanings hidden behind the subject in enforcement law. What is the meaning behind their behavior? Subject behavior in law enforcement, always determined by the various disciplines regarding them, which Chambliss and Seidman expressed as the resultant result. From analysis it is clear why the BPN bureaucratic system has not fulfilled society's sense of justice.

In a state of law, law not only serves as security and public order, it is more important to create better welfare for people and achieve the goals of the law itself, namely justice and implementing the law consistently. IS Susanto in the Opening the 1945 Constitution, then the primary function the rule of law is:

1. Protection, namely the law has a function to protect the public from threats dangers and harmful actions that come from each other and the group the community, including those carried out by power holders (government and state) and those that come from outside are addressed to physical, mental, health, values and his human rights.
2. Justice, which is the function of law, is to protect, protect and give justice for all the people. Negatively can it be said that an unjust law is when the law in question is viewed as violating our values and rights believe must be guarded and protected for everyone.
3. Development is the third legal function of development within the framework of creating prosperity for all people in Indonesia. This implies that Indonesia's development is entirely for improving the welfare of the people in all economic, social, political, cultural, and spiritual ways. Thus the law is used as a good vehicle in determining direction objectives, and implementation of development.

Yos Johan Utama, said that consequences as a state of law, *mutatis mutandis* creates obligations for the state, to implement the principle of a just state, the principle of justice in the rule of law, trying to find the midpoint between the two interests. On the one hand, giving the country's opportunity to run a government with its power, but on the other hand, society must get protection of their rights through the principle of legal justice. It is further said that the paradigm of the welfare state, placing citizens or individuals to become legal subjects, which must be protected and prospered in all aspects of his life. Country inner the welfare state paradigm places citizens as legal subjects, not as legal subjects.

Arief Hidayat, provides an overview of the rule of law, where in the rule of law democracy cannot be discussed separately or without relating to the concept of the state law, because the rule of law is wrong one characteristic of a democratic country, and democracy is the safest way to maintain control over the rule of law.

The idea on the basis of the rule of law is that state law of the country must be carried out properly (in the sense of according to what is expected by society against the law) and fair (because the basic purpose of law is justice). With this mandate, the function of governance in the field of land must be supported by the existence of and human resources (HR) in the system land bureaucracy, meaning role there is not limited to managing administrative aspects and management alone, as negative image that has formed "bureaucratic imagery" of fisherman apparatus the bureaucracy of the National Land Agency in the last few decades.

The State's goal to realize the system of good land bureaucracy is related with the aim of agrarian reform, namely for the sake of creating a just and prosperous society,

clearly contained in the preamble of the MPR Decree No. IX In 2001, it was stated that resources agrarian and natural resources as a blessing from God Almighty to the Indonesian people, is a mandatory national treasure to be grateful. Therefore, it must be managed and utilized optimally for the current generation and future generations in order to create a just and prosperous society, to setting the direction and basis for development that can answer various problems poverty, inequality and socio-economic injustice of the people as well as resource management ongoing agrarian activities, so far have led to imbalances in structure, substance and culture of possession, possession, use and their use as well as giving rise to various conflicts where the laws and regulations related to resource management just and sustainable agrarian, must carried out in a coordinated, integrated and accommodate dynamics, aspirations and participation community and resolve conflicts.

To realize lofty ideals for the Indonesian nation as stated in the preamble to the 1945 Constitution, commitment is needed in serious politics to provide a just basis and direction for agrarian reform, sustainable.

For that, the system to update agrarian law must be implemented in accordance with principles: including welfare people, especially through quality improvement of Indonesian human resources, realizing justice in domination, possession, use, utilization and maintenance of resources, recognize and respect the rights of indigenous peoples and diversity national culture on agrarian resources.

Justice is a universal value, namely recognizing and respecting the legal rights of every person and protecting his freedom, honor, blood and property by upholding truth and justice among others. The upholding of truth and justice in a society produces peace and security in everyday life and mutual trust between the government and the people, in addition to fostering prosperity and prosperity. In a safe, orderly and calm atmosphere, each party can work with full energy, mind and heart to devote themselves to the interests of the country and its inhabitants without fear of being hindered by their business or hindered by their activities.

Justice is something that is felt balanced, appropriate, so that everyone or most of the people who experience it feel worthy. One of the most important characteristics of justice is the balance between rights and obligations. Justice is standing in the middle between two things, giving each person what he deserves.

The source of the concept of justice, control, use, ownership and utilization of land is closely related to the religious concept, where land is seen as a gift from God, for every living creature, such a concept is in accordance with the concept of natural law, so that land is a right for every human being, or rather Every human being has the right to live on land, every human being has a natural right to land, as well as other life rights such as the right to clothing, food and housing. Land is a natural right for every living being and is a concept of justice given by God Almighty.

Subjectively, the concept of the rule of law as contained in the 1945 Constitution of the Republic of Indonesia Article 1 paragraph 3 becomes a special guide for the community in presenting a state system that is accommodative to the development of society. The final result of the concept of the rule of law is then translated by Gustaf which subjectively becomes a form of justice, benefit and certainty that can be accepted by every community.

The value of expediency, certainty and justice has always been a source of debate on the interpretation of truth in the doctrines of legal experts in laying down where the law actually is. In Muhammad Erwin's view, which was written in his book entitled philosophy of law, critical reflection on the law, the true meaning of law is the nature of freedom and dignity, which means that law enforcement must side with justice, namely justice for all.

Because, if law enforcement can apply the value of justice, of course the application of the legal function is carried out by way of thinking philosophically.

The definition of justice according to the Big Indonesian Dictionary is; 1. Equal, impartial, impartial; 2. Siding with the right, holding on to the truth; 3. Properly, not arbitrarily. Justice: the nature (deeds, treatment, etc.) We cannot deny that the law has become a very important instrument for people's lives. So it is not surprising that some countries place the law in the highest position (supremacy of law). Our country, Indonesia, based on the 1945 constitution, is one of the countries that places the law in its highest position. Consequently, Indonesia as a state of law, one of which in carrying out its government system is obliged to adapt to the applicable positive law. So it is natural for legislation to play a very strategic role as the basis and strategy of the state to achieve the goals as determined in the preamble to the constitution of the 1945 Constitution.

Plato stated that good governance is regulated by law, while in his book entitled *Laws*; the state must be ruled by a head of state who is subject to the applicable rules, This is in line with the opinion of Aristotle in his book *Politics*, which also formulates that a good state is a state governed by a constitution and the rule of law.

In understanding the rule of law, it can be seen that in essence the law itself determines everything. Aristotle also argued that law could only be established in relation to justice. So according to him, the most important goal of law is to realize justice, so that automatically the rule of law is also oriented towards justice for its people.

Aristotle's view of justice can be found in his work " *nicomachean ethics*, politics and zionism. Specifically seen in the book *nicomachean ethics*, the book is entirely devoted to justice based on Aristotle's legal philosophy, although it is considered the core of his legal philosophy, "because law can only be determined in relation to justice". In essence, this view of justice is the granting of equal rights but not equality. Aristotle distinguishes equal rights according to proportional rights. Proportional equality gives each person what he is entitled to according to his abilities and achievements.

Furthermore, according to Aristotle's view, justice is divided into two types of justice, namely:

1. Justice Distributive.

Justice Distributive is justice that gives each person a portion according to his achievements.

2. Commutatif Justice

Commutatif justice gives equal amount to everyone without discriminating their achievements in this regard with regard to the role of exchanging goods and services.

Meanwhile, according to Hans Kelsen in his book 'General theory of law and state', the view that law as a social order can be declared fair if it can regulate human actions in a satisfactory way so that they can find happiness in it.

Two more things Hans Kelsen's theory of justice is; The first is about justice and peace. Justice comes from irrational ideals. Justice is rationalized through knowledge that can take the form of interests which ultimately lead to a conflict of interest. Resolution of the conflict of interest can be achieved through an arrangement that satisfies one interest at the expense of the other's interests or by trying to reach a compromise towards a peace for all interests.

The second theory from Hans Kelsen is about justice and legality. To uphold on a solid basis of a certain social order, according to Hans Kelsen the notion of justice means legality. A general rule is fair if it is actually applied, while a general rule is said to be unfair if it is applied to one case and is not applied to other similar cases.

This theory of justice and legality is applied in the national law of the Indonesian nation which means that national legal regulations can be used as a legal umbrella for other national legal regulations according to their level and degree and that these legal regulations have binding power to the materials covered by the law. Contained in the legal regulations.

The ultimate goal of law is justice. Therefore, all efforts related to the law absolutely must be directed to find a legal system that is most suitable and in accordance with the principles of justice. Law must be closely intertwined with justice. The law is a just law. If a concrete law, namely the law is contrary to the principles of justice, then the law is no longer normative and cannot be said to be a law anymore. The law only becomes law if it fulfills the principles of justice. In other words, fairness is a constitutive element of all understandings of law.

Justice is the highest virtue value, "justice is the supreme virtue which harmonizes all other virtues". In addition, the Greek philosophers viewed justice as a continuous and constant goal to give everyone their rights, "justice is the constant and continual purpose which gives to everyone his own". Several figures including Thomas Aquinas, said that the essence of law is justice, therefore the law must contain justice. An unjust law is not a law.

Legal Justice or also known as justice in law, namely a relationship of justice between citizens of the state and in this case it is the citizens who are obliged to fulfill justice in the form of obeying the laws and regulations in force in the country. Justice and law are the substance of the society that makes and becomes its unity. In a just society, everyone carries out work according to his nature which is most suitable for him ( the man behind the gun ). This is called moral justice.

These values of justice must be a basis that must be realized in living together with the state to realize the goals of the state, namely realizing the welfare of all its citizens and protecting all its citizens and territories, educating all its citizens. Likewise, the values of justice are the basis for the association between countries and nations in the world and the principle of wanting to create an orderly living together in an association between nations in the world based on a principle of independence for each nation, eternal peace and justice in living together (social justice). . The realization and protection of justice in living together in a national state requires the state to create a statutory regulation. In this sense, the nation-state with social justice must be a state based on law. So that as a legal state, three main conditions must be met, namely: First, the recognition and protection of human rights; Second, the judiciary is free and impartial and views equality; Third, legality in the sense of law in all its forms.

Pancasila, as the source of national law for the Indonesian nation, has the highest position, so that any laws and regulations that are made and enforced must not conflict with the values of the five precepts in Pancasila. Justice in the values of the laws and regulations that are made and enforced must be social justice as referred to in the meanings and values contained in the fifth principle of Pancasila.

Based on the Stufenbau of Hans Kelsen, it can be used to justify this with the assumption of a Grundnorm, in this case Pancasila which is in the top position of the levels or categories that are below it. Grundnorm is like the fuel that drives the entire system, and results in mutually binding and complementing each other. By Satjipto Rahardjo, based on Stufenbau Hans Kelsen's theory, the higher the position in the normative order, the richer the moral content or general principles will be and the lower the position, the more concrete and thin the moral content will be.

Based on the basic theory of Hans Kelsen, which in its implementation can be used to measure the level of synchronization of scattered legal products and is directly related to



the initiation of a draft law. Theoretically, Stufenbau according to the teachings of "des Rechts" from Kelsen, as also Hans Nawiasky mentions the term "Die Stufenordnung der Rechtsnormen" he says that the legislation has a sequential order, from top to bottom consisting of 4 (four) group.<sup>26</sup>, namely:

Group 1	<i>Staats fundamental norm</i> (fundamental norms of the state)
Group II	<i>Staatsgrundgesetz</i> (basic rules/basic rules of the state)
Group III	<i>Formell Gesetz</i> (Formal Laws)
Group IV	<i>Verordnung &amp; Autonome Satzung</i> (implementing rules & autonomous rules)

Jazim Hamidi, emphasized that the fundamental norms of the state are the highest norms in a country that are not formed by another norm. This norm is determined in advance by the community; Basic rules/basic rules of the state are rules that are basic in nature, still general and still in outline and are still single norms that have not been accompanied by secondary norms. Formal laws are concrete norms, detailed and directly applicable to the community and no longer contain a single norm, besides containing primary norms, they can also be made with sanctions norms and while implementing regulations function to carry out the provisions of the Act.

The power to bind each regulation according to its level, apply the legal principle of *lex superior derogat legi inferiori*? This means that provisions with a higher level have higher power when compared to provisions with lower levels. It can also be interpreted that when there is a provision at a lower level that is inconsistent, contradicts or does not agree with the provisions of a higher level, then the lower provisions are in line with the provisions of a higher level, the lower provisions do not have binding force because they do not comply with the principle.

Based on the theory of "*Stufenbau des Rechts*" from Hans Kelsen, promovendus can draw the conclusion that all decisions / decisions of judges, including decisions / decisions of Commercial Court Judges must refer to and are based on and must not conflict with the regulations that are higher above them, in particular they must not conflict with Pancasila as the *Staats Fundamental Norm* (fundamental norms of the state). If it is unfounded or even contradicts the regulations higher above it, especially contrary to Pancasila as the *Staats Fundamental Norm* (fundamental norms of the state) then the judge's decision / determination can be annulled and null and void and does not reflect justice, especially dignified justice based on Pancasila.

Justice according to Pancasila is interpreted as recognition and balanced treatment between rights and obligations. Justice in Pancasila must also always think about harmonious relationships between individuals and groups in social life, this is to realize justice in civilized human life. Social justice in the fifth precept of Pancasila in essence is justice that concerns the interests of society and groups so as to reduce the rights of individual freedom.

Our National Law regulates justice for all parties, so that justice according to Indonesian law which is 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 the balance pattern between individual rights and social obligations.

*Good Governance* is basically a concept that refers to the process of achieving decisions and their implementation that can be accounted for together. As a consensus reached by the government, citizens, and the private sector for the administration of government in a country. The state plays a role in providing services for the welfare of the



people with a good judicial system and a government system that is accountable to the public. Referring to the 3 (three) pillars of sustainable development.

In economic development, environment, and human development. *Good governance* touches 3 (three) parties, namely the government (state organizers), corporate parties or the business world (economic drivers), and civil society (finding conformity). These three parties play a role and influence each other in good state administration. Synchronization and harmonization between the parties is a big answer. However, with the current state of Indonesia, it is still difficult for this to happen.

Indonesia is one of the countries in the world that is struggling and yearns for clean and *good governance*. To achieve *good governance* in governance in Indonesia, then the principles of *good governance* should be enforced in various important government institutions, these principles include: Community participation, upholding the rule of law, transparency, care and stakeholders, -oriented, equality, effectiveness and efficiency, accountability, and strategic vision, so that what Indonesia desires become country and *good governance* can be realized and the disappearance of factors Political interests, corruption, corruption, unfair justice, working outside the authority, and lack of integrity and transparency are some of the problems that make good governance still unattainable.

Communities and governments that are still at odds to overcome these problems should establish harmonization and cooperation in overcoming the existing problems. *good governance* as an effort to achieve good governance is reflected in various fields that have an important in the movement of the wheels of government in Indonesia which include: political, economic, social, and legal fields.

## V. Conclusion

The ideal concept of implementing Good Governance in the Land Registration process by PPAT is based on the Value of Justice, then the principles of good governance should be enforced in various important government institutions, these principles include: Community participation, upholding the rule of law, transparency, care and stakeholders, -oriented, equality, effectiveness and efficiency, accountability, and strategic vision, so that what Indonesia desires become country and good governance can be realized and the disappearance of factors Political interests, corruption, corruption, unfair justice, working outside the authority, and lack of integrity and transparency are some of the problems that make good governance still unattainable.

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