Research Article
GOOD FAITH PRINCIPLE ON INDONESIA AGRARIAN LAW
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ABSTRACT
The good faith principle within the transfer and registration of the land rights using the Land Deed Official (PPAT) certificate is yet to be achieved. The type of data in this study is primary and secondary data. Data were collected by interviews and literature studies. The technique of analyzing data is interactive analysis (interactive models of analysis). The discussion of the study indicate that the good faith was used as the principle of Indonesian Agrarian Law (UUPA), but the registration of the land rights applied throughout Indonesia, the monitoring is regulated by the government through the Minister of Agrarian and Spatial Planning or National Land Agency, it means that the principle of Good Faith on UUPA does not manifest. Implementation of good faith principle on UUPA will only be achieved through the amendment of Land Reform, PPAT Law, and issuing a law regarding the Land Rights Transfer or Land Ownership.

INTRODUCTION
The relationship between state and individuals relating to land is reflected in the provisions of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia: "the land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people." This Article then become vision, mission, and spirit of the act no. 5 of 1960 concerning Basic Regulations on Agrarian Principles with the Land Reform as the main agenda. The article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia contains a very basic constitutional mandate, in which the utilization and the use of land and all natural resources must be able to bring the greatest prosperity and welfare to all the people of Indonesia. It also means that every right on land and other agrarian resources is demanded to be certain about the subject, object, and implementation of the authority of its rights.

Thus, the vision, mission, and spirit of the Basic Regulations on Agrarian Principles of 1960 as a derivative product of Article 33 of the 1945 Constitution of the Republic of Indonesia are very clearly oriented towards the realization of the objectives of the Unitary State of the Republic of Indonesia (NKRI), which is state welfare, and the welfare can be enjoyed if justice has been obtained.

In practical level, various cases emerge throughout Indonesia regarding to the Article 33 (3) of the UUD 1945, such as land rights conflicts between the government of Indonesia and the people; the invoking of the land rights, occupation of the state lands, and the plantation land conflicts (Istislam et al. 2014), occupation of the land ex-business rights (Permadi, 2016), etc. Similarly, there are also many cases due to the abuse of power committed by the Office of the National Land Agency. These are suspected due to the lack of understanding and lack of law enforcement on the substance of the Agrarian law and due to the Good faith Principle that is yet to be implemented.

The Good faith Principle as a universal principle must be implemented by the government, the Ministry of Agrarian and Spatial Planning or the National Planning Agency to achieve good governance in each legal relationship, including the agrarian law in Indonesia.

Good faith is not only during the implementation of the agreement but also during the making or the signing of an agreement (Suharmoko, 2004). The strong influence of good faith is not only on the implementation of the contract but also during the making of the contract (Solikha, 2015; Khairandi, 2003). Similarly, Sulistyarini at al. (2018) claims that good faith within the contract is only an interpretation that suits the principle of fairness and appropriateness. Nevertheless, each person has the freedom to determine their intention and this is not against human rights. It is in line with McKendrick (2018)
that this principle is a subjective right. In the same tune, Laila (2016) also wrote that Good faith in the implementation of the agreement ultimately means that the agreement should be carried out based on fairness and appropriateness.

The signing of an agreement, related to the registration of the land rights for the community to prevent the disputes on the ownership of that particular land, can be carried out in a front of Land Deed Official (PPAT).

Land Deed Official (PPAT) is regulated within the government regulation PP No. 37 of 1998. However, considering the PPAT existence is not referring to the observed legal system and the element of the Public Officers are yet fulfilled (Yudara, 2001) due to the PPAT Law is yet enacted, judicially PPAT is not a public officer as stipulated within the Article 1868 of the KUH Perdata, but in practice, the PPAT exists and is accepted by the legal community. The PPAT is acknowledged as the authorized officer to implement the function of the Public Officer that is to produce a legal deed, specific for land rights transfer and forfeiture of land rights and land ownership.

Based on this research, the implementation of the Good faith Principle can be in the form of Agrarian agreement, when the landreform is carried out through the establishment of the Land Rights Transfer Law or Land Ownership and enactment of the PPAT Law.

METHODODOLOGY

This study is an empirical study with the purpose to identify the laws of the community with the intention to know other symptoms. This research is descriptive, which aims to accurately describe the properties of an individual, circumstance, particular symptom or group, or to determine the spread of a symptom, there is a relationship between a symptom and the other symptoms in the community (Sukanto, 1986). The type of data in this study is primary and secondary data. Primary data was collected by interview and secondary data obtained through literature study, electronic media, internet, laws regulation and the other literature. The technique of analyzing data is interactive analysis (interactive models of analysis).

DISCUSSION

Understanding of Law

According to the Indonesian Encyclopedia, law is a set of rules, regulations, rules of regulation, both written and unwritten, which determine or regulate relationship among the members of society (Machmudin, 2010)

Von Savigny sees law from a historical perspective of the existence of law. Then, he said, Das Recht wird nich gemacht, es ist und wird mit dem Volke (the law is not made, it exists and is united with the nation). It means law is rooted in human history so that it is brought to life by the conditions, beliefs, and habits of citizens of the nation's people. Padmo Wahyono tends to see law as a tool by limiting the law as a tool or mean to organize the state life or the order, and it is as a means to organize social welfare at the same time (Limbong, 2012).

A more procedural-implementation law definition was put forward by Utrecht, cited by Sudarsono (2007), A law is a collection of regulations containing the commands and prohibitions taking care of the order of a society, and therefore, it should be obeyed by that community.

Therefore, violations of these instructions can lead to action from the government. Meanwhile, according to Mochtar Kusumaatmadja cited from Limbong (2012), A law is the whole of the principles and rules governing human life in society, and it also includes the institutions and processes bringing the rules into effect in reality.

Referring to some of the above meanings, it can be concluded that the law was made to control human behavior while protecting human interests both as individual creatures and as social beings living in a society. Lawmaking must lead to the creation of a common good and the realization of justice in society.

Understanding of Agrarian Law

According to the Black's Law Dictionary, agrarian law is the law governing the ownership, use and distribution of rural land. Agrarian laws also refer to the set of legal regulations aiming at dividing the vast tracts of land to more evenly control and ownership (Supriadi, 2010).

According to Soedikno Mertokusumo cited from Santoso (2009), agrarian law is the entire legal principles, both written and unwritten governing agrarian. Furthermore, Santoso (2009) stated, written legal norms are agrarian law in the form of legal and other written regulations made by the state, whereas unwritten legal norms are agrarian law in the form of agrarian traditional law made by local indigenous people which its growth, development, and validity are maintained by the concerned indigenous peoples.

Supriadi (2010) stated that Agrarian Law is not only a legal instrument. Agrarian Law is a group of various fields of law, each of which regulates the control rights over certain natural resources including agrarian understanding. The various law groups consist of:

a. Land Law, regulating the control rights over the land, in which it means all of the surface of the earth.
b. Water Law, regulating the control rights over the water.
c. Mining Law, regulating the control rights over the mining materials intended by the Basic Mining Law.
d. Fisheries Law, regulating the control rights over the natural resources contained in the water.
e. The Law on the Control of Energy and Elements in Space, regulating the control rights over the power and elements in space as intended by Article 48 of the Basic Regulations on Agrarian Principles.

Thus, it can be said that agrarian law is the entire legal principles, both written and unwritten, governing agrarian affairs, both in a narrow sense, only covering the surface of the earth (land), and in a broad sense, encompassing earth, water, space space, and the natural wealth contained therein..

Understanding of Land Law

Land, in the agrarian sphere, is part of the earth, i.e. the surface of the earth as it reads the provisions of Article 4 paragraph (1) of the Basic Regulations on Agrarian Principles:

On the basis of the state's right to control as referred to in Article 2, there are various kinds of rights to the surface of the
earth, called land, which can be given to and owned by people, both individually and together with other people and legal bodies (Supriadi, 2010).

On the basis of the provisions of Article 4 paragraph (2) of the Basic Regulations on Agrarian Principles, the holder of the right to land is given the authority to use the intended land, as well as the surface of the earth, water, and space above which is only needed for direct interests related to the use of the land within the boundaries according to the Basic Regulations on Agrarian Principles and other higher legal regulations.

According to Perangin (1991), Stated that Land Law is the entire legal regulations, both written and unwritten regulating control rights over the land which constitute legal institutions and concrete legal relationship.

Land Law is the entire legal provisions, both written and unwritten, all of which have the same regulatory objects, which is the control rights over the land as legal institutions and as concrete legal relationship, both public and private aspects, which can be arranged and systematically studied, until the whole becomes a unity which is a system (Santoso, 2009).

The object of land law is the control rights over the land. What is meant by the right to control land is a right containing a series of authority, obligations, and/or prohibitions for the holders of their rights to do something about the land that is claimed. The object of land law is the right to control land which is divided into rights to land as a legal institution and as a concrete legal relationship (Perangin, 1991). As a legal institution, the right of ownership of this land has not been associated with the land and certain legal bodies or entities as subjects or holders of their rights. As a concrete legal relationship, the right to control this land has been linked to certain rights as objects and certain legal bodies or entities as subjects or holders of their rights (Limbong, 2012).

Control-rights hierarchy of land in national land law are the rights of the Indonesian people, the right to control from the state, the customary rights of customary law communities, and the individual rights. The rights of the Indonesian people are the highest control rights and are the source of other control rights.

Regarding the right to control the state, the concept is normatively regulated in Article 2 of the Basic Regulations on Agrarian Principles. This right does not give an authority to control physically but solely as public authority. The state is given the authority to regulate land and other elements of natural resources constituting national wealth.

The details of the state's authority are clearly regulated in paragraph (2), including (Parlindungan, 1983)

1. Managing and administering the designation, supply, and maintenance of the earth, water, and space.
2. Determining and regulating legal relationship between people and earth, water, and space.
3. Determining and regulating legal relationship between people and legal actions concerning earth, water, and space.

Based on the explanation above, the control rights over the land is determined by the government through the Ministry of Agrarian Affairs and the National Land Agency (BPN) through a legal process that has been determined based on the Basic Regulations on Agrarian Principles. In the article 19, paragraph (1) of the Basic Regulations on Agrarian Principles, it is intended that registration of land rights be carried out to achieve the Recht Kadaster, Legal Protection and Orderly Land Administration. Therefore, if the Goodwill principle is realized in the implementation of the Basic Regulations on Agrarian Principles, the prosperity of the Indonesian people will be achieved as stated in article 33, paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

Good Faith Principle on Transfer and Registration of Land Rights by the Government

Good faith (tegoedertrouw) or the opposite of Bad Intention (tekwadertrouw) is often brought forward in arguments among the disputing parties in a civil case. However, there are yet regulations that provide the definition of the Good faith Principle other than this principle, which should be implemented without harming the other party. Law No. 30 of 1999 on arbitration and alternative settlement of the disputes as the main umbrella of the mediation procedure also does not provide a definition of Good faith.

The Good faith Principle as written in Article 1338 (3) of the KUH Perdata states: “Agreement should be carried out with good faith”. This Good faith principle is as important as other legal principles similar to that of the freedom to bind into an agreement.

From the available literature, the Law Makers find it hard to define Good faith into legal terminology. This blames the variations of subjects and objects of the law.

The Agrarian Law (UUPA) is a formal law containing the principles of agrarian law, whereas its implementing rules regulate various ways to implement these principles (Sutedi, 2014). The UUPA article Number 26 paragraph (1), UU Number 25 Year 2009, and UU Number 30 Year 2014 were issued to increase the quality of governance and support the implementation of democratic reformation, prevent the abuse of power, and ensure accountability of the government, as well as provide legal protection for people which suit the Good Governance Principle (Suparjo, 2016).

Regarding the implementation of Article 19 (1) and Article 26 (1) of the UUPA, there is no conflict of interest when the implementation of the monitoring of the land rights transfer and registration which are appropriately monitored. Monitoring can be defined as a process to ensure the objectives of the organization are achieved (Handoko, 2003).

Within the implementation of land rights transfer and registration, article 26 (1) UUPA stated that Purchase and Selling, exchange, grant, and gifts are made by the will and other actions intended to transfer the ownership and its monitoring regulated with the Government Regulation. This rule is a means of control for the weak or poor citizens toward other citizens whose more powerful economically. It needs to be noted that within the Article 26 (1) of this UUPA, the word “its monitoring...” is stated.

In this article, the monitoring theory used by the government (the Ministry of Agrarian and Spatial Planning) towards the implementation of land rights transfer and registration carried out by the head of the National Land Agency at various levels
for RechtKadaster. Even though many scholars try to develop this theory of monitoring, monitoring is still implemented within the level of theory to analyze the performance of the National Land Agency at the city/district level in a province.

One of the most important components of the public service is external monitoring by the public, considering that the public is the receiving end of the service. When the community is aware of their rights and obligation in monitoring the public service delivery, inputs and feedback from the community will make implementing the agency of public service will try to improve their public service delivery.

The public is expected to actively participate in improving the public service delivery as they are now aware of their rights and obligations as well as they are being critical toward the monitoring of the public service that they receive. All controls and monitoring, both internally and externally in public service should complement each other and cooperate for better service delivery. Quick response and follow-up actions from the deliverer of the public service on the complaint and feedback from the community should be implemented as when internal monitoring is yet optimum then the parliaments at all levels should be quick in actions to implement their external monitoring functions.

In a legal action of legal rights transfer and registration, where a right for the land is transferred from one party to another, it should be made in front of the PPAT, including the formal agreement, which is stipulated by certain formality and existence of the authentic certificate signed in the presence of the PPAT.

The legal basis for the existence of the PPAT is Government Regulation Number 37 the Year 1997 which has been amended by Government Regulation Number 24 the Year 2016 on the Position of the Land Deed Officer.

**Good Faith Principle on Transfer and Registration of Land Rights by Land Deed Official (PPAT)**

Land Deed Official (PPAT) was appointed by the government, in this case, the National Land Agency with duties and authorities in order to serve the community's needs for the transfer of land rights deed (Purwaningsih, 2015). But UUPA does not regulate even absolutely not offensive about PPAT, for example in article 19 paragraph (1) of UUPA (Boedi, 2003). Article 19 rule Number 10 the year 1961 concerning land registration does not mention PPAT and does not regulate. In Article 19 only mentions "officials".

The main task of the PPAT is to implement a part of the Land Rights Registration by creating a land deed as evidence of the implementation of a certain legal action on the land rights of the certain land unit, which serves as the basis for the registration of the land due to that legal action.

Thus, the authority of the PPAT to create authentic deed is only a part of their jobs, as stipulated in Government Regulation Number 24 Year 2016, or based on the reality where land or land rights of a housing, is not on where the parties come forward (the buyer or the seller), or where the holder of land rights reside nor where the land rights recipient reside.

Disregard the regulation on the PPAT, which has covered several regulations such as mentioned previously, the legal certainty is yet provided.

The extent of the authority of PPAT to make an authentic deed is limited by the extent of the working area of the land deed. The working area of PPAT stipulated in article 12 (1) of the Government Regulation number 24 the year 2016 for the amendment of government Regulation number 37 the year 1998 which reads "The working area of PPAT is one provincial province", but in practice, it is still difficult to implement.

**Several amendments of Government Regulation Number 38 the Year 1998 are as follows**

1. Government Regulation Number 24 the Year 2016 on PPAT, which stipulates the conditions that should be obeyed by the PPAT in the implementation of their jobs.
2. Government Regulation Number Year of 2016, is a regulation on the position stated by the Article No 7 (3) of the PP No. 24 of 1997 on the Registration of the Land Rights, which mentioned: “The Regulation on the Position of the PPAT as stipulated in verse (1) is regulated separately with a Government Regulation”.
4. Government Regulation Number 1 the Year 2006 on Jobs Regulation of the Officer Authorized to Make Land Deed (PPAT), which later amended by the Regulation of the head of the National Land Agency of the Republic of Indonesia No. 23 the Year 2009.
5. Government Regulation Number 24 the Year 2016 stated; “the working area of the PPAT covers a province”

Although the arrangement of PPAT is regulated in several statutory regulations as mentioned above, but in the reality is not the creation yet of legal certainty, for example Before the regulation of the chairman of National Land agency number 8 the year 2012, About the change of regulation of the Minister of Agrarian/Chairman of National Land agency number 3 year 1997 on government Regulation number 24 year 1997 About Land registration, One of the problems in the practice of PPAT is....... “should PPAT use the blank deed that has been specified by the government...?!”

In article 1 of the State land Agency (BPN) with regulation number 1 the year 2006, (amended in the regulation of BPN number 23 the year 2009) (amended in the regulation of BPN number 23 the year 2009), stated that... ”Blank deed of PPAT made and published by BPN”, thus means the BPN requires PPAT to use the blank deeds which are printed by the BPN, while PPAT wants to be allowed to make a blank deed with their own as a notary blank deed (Do not have to use BPN blank deed).

The similarities and differences of the blank deed which is printed by BPN and printed by PPAT based on Perkaban number 08 the year 2012, as listed in Fig. 1
CONCLUSION

Ownership and issuing a law regarding the Land Rights Transfer or Land achieved through the amendment of land reform, Implementation of good faith principle on Spatial Planning or National Land Agency the government applied throughout Indonesia, Agrarian Law (UUPA), but The good faith was used as the principle of Indonesian realized. the Tran 1965 of the Civil Code that the Good Commitment Principle in Republic of Indonesia and Article 19, paragraph (1) of the related to Article 33, paragraph (3) of the 1945 Constitution of principle of good faith. If referring to the Practical Value Constitution of Republic of Indonesia is able to provide the thus the realization of Article 33, paragraph (3) of the 1945 Kadaster, Legal Protection and Orderly Land adminis. Registration of land rights is carried out to achieve the Recht counterfeiting and misuse of the Authentic act by others. identity of the respective PPAT to minimize the risk of

Based on Fig. 1, the Ministry of Agrarian and Spatial need to -

Draft the PPAT blank deed based on Perkaban Number 08 year 2012. In addition it is necessary the Ba

Figure 1 The similarities and differences of the blank deed which is printed by BPN and printed by PPAT

Registration of land rights is carried out to achieve the Recht Kadaster, Legal Protection and Orderly Land administration, thus the realization of Article 33, paragraph (3) of the 1945 Constitution of Republic of Indonesia is able to provide the greatest prosperity of the Indonesian people, by realizing the principle of good faith. If referring to the Practical Value related to Article 33, paragraph (3) of the 1945 Constitution of Republic of Indonesia and Article 19, paragraph (1) of the Basic Regulations on Agrarian Principles, referring to Article 1965 of the Civil Code that the Good Commitment Principle in the Transition of Land Rights in Indonesia has not yet been realized.

The good faith was used as the principle of Indonesian Agrarian Law (UUPA), but the registration of the land rights applied throughout Indonesia, the monitoring is regulated by the government throughout the Minister of Agrarian and Spatial Planning or National Land Agency, it means that the principle of Good Faith on UUPA does not manifest. Implementation of good faith principle on UUPA will only be achieved through the amendment of land reform, PPAT Law, and issuing a law regarding the Land Rights Transfer or Land Ownership.

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