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LAND REGISTRATION ACCELERATION IN INDONESIA: LESSONS LEARNT FROM LAND REGISTRATION SYSTEM IN MALAYSIA

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ABSTRACT

Every country has its land policy system. Indonesia employs deeds registration which refers to the Basic Agrarian Law (BAL) and Malaysia uses a title registration system called the National Land Code (NLC). Indonesia has yet to complete its land registration mandate throughout the country since the mandate was officially introduced in the BAL 1960. While Malaysia has adopted a Torrens system concerning land matters, recognising that land registration is everything. The first part of the paper focuses on beneficial ownership, confidential land ownership data, identifying land registration constraints and strengthening land administration abilities, while the second part focuses on land registration as a legal instrument and land rights ownership affirmation. The main question

in this research is to analyse whether the quantity, quality and legal certainty guarantees of land registration are strongly influenced by a well-organised land registration system. Indonesia and Malaysia are still addressing weaknesses in their respective land registration systems based on issues. There is a need for improvement of roles from two main stakeholders, namely the government's role in streamlining administration and the role of community participation in supporting successful land registration. This paper will also provide recommendations for academicians, government/institutional leaders, and legislators to assess and continuously strengthen the BAL as the fundamental principle of land law in Indonesia, especially in its land registration system and legal certainty over land registration.

Keywords: Land administration, land dispute, land issues, land policy, land registration.

INTRODUCTION

Land is one of the basic human needs to live. Human activities in daily life, directly or indirectly cannot be separated from the need for land. According to 2021 statistics by Worldometer, the population of Indonesia and Malaysia is 275,986,047 and 32,720,404, respectively. In developing countries throughout the world, population growth and urbanization bring about an increasing demand for affordable and stable housing, especially in Indonesia and Malaysia. Land ownership is important, considering it is one of the primary human needs for shelter and livelihood. Land ownership will be complete with the process of recognition of ownership rights recognised by the state.

After Indonesia's independence in 1945, land registration was mandated after the enactment of Act No. 5 of 1960 concerning Basic Agrarian Law (BAL). The objective of the land registration system, as stipulated in the BAL is to provide legal certainty in the agrarian sector (Palilingan et al., 2019). Since the mandate for land registration in the BAL 60 years ago until the enactment of the Government Regulation No. 24 of 1997 as the implementing regulation of BAL, if land registration has yet to use advanced technology to accelerate implementation, it will take at least 100 years to fulfil and complete the land registration mandate (Rahmi, 2019). To date, only 73 million land parcels in Indonesia have been registered and certified, out of

an estimated total of 126 million plots. The Government targets that in 2025 all land parcels in Indonesia will have been registered and certified. Of course, land registration is not only aimed at accelerating the number of land registration parcels. but that the good quality land registration system will provide legal certainty for rights holders and third parties.

In order to ensure legal certainty, land registry operations are carried out in all regions of the Republic of Indonesia, according to the requirements set out in the Government Regulation No. 24 of 1997 namely: (1) collecting and processing physical data (including measuring and mapping, determining the boundaries of land parcels, making registration maps, making land registries and producing measuring letters), (2) proofing of rights and bookkeeping (including bookkeeping of rights and issuing certificates). It is also mentioned in Article 19 clause 1 of the BAL, which reads, “To ensure legal stability, the Government of the Republic of Indonesia hereby shall conduct land registry in the territories of the Republic of Indonesia.” Land registration as referred to in this research includes (1) “First-time land registration”, namely land registration for land parcels that have not been registered, and (2) land registration for land parcels for the purpose of transfer or any dealings.

Land registration is an official recording of legally recognized interest in land. There is no universal system of land registration but it is generally accepted that there are two different approaches, deeds registration or title registration (World Bank Group, 2017). While in Malaysia, since independence in 1957, all statutes concerning land have been replaced by the Torrens system. This conversion followed similar developments in Singapore in 1956, Penang in 1966, Melaka in 1966 and the enforcement of the 1965 National Land Code (Johari et al., 2014). In the Malay states, personal possession of land is only available through a grant from the government and this is achieved through registration. Therefore, Indonesia and Malaysia, through the BAL and NLC, respectively believe and recognise that land registration is quite important.

Indonesia and Malaysia are still facing issues especially concerning land registration. Based on World Bank data on land dispute resolution index measuring the accessibility of dispute, the scope of responsibility

of individuals or agents that report land transactions is ranged between 0 and 8. Indonesia was ranged at 3 while Malaysia was ranged at 4.5 between 2019 and 2020. The determinants of the measurement entail the following eight elements: (1) whether it is mandatory for the law to ascertain that the registration of whole property sale transactions should be applied at the immovable property registry so that they are legally enforceable to third parties, (2) whether there is a guarantee to determine the formal system of registered immovable property, (3) whether a particular compensation (finding a settlement to a legal argument without involving the court) is provided to replace the losses faced by parties putting their trust in property transactions grounded on misinformation asserted by the immovable property registry, (4) whether verifying the legality of documents (sales, transfer, including deeds) in a property transaction is required by the legal system, (5) whether verifying the identities of parties to a property transaction should be implemented by the legal system, (6) whether a national database is accessible for verifying the validity of identity documents, (7) the length of time that should be taken to arrive at a decision made by the court hearing a case for the first time (an appeal is not required) in a land dispute involving two local businesses concerning tenure rights worth 50 times per capita income in which the location is in an enormous business city, and (8) whether statistics concerning land disputes in the first instance are provided openly (The World Bank, 2020).

This study uses a causal-comparative method. Causal-comparative research is a study in which the researcher tries to determine the causes or reasons for differences. The basic design for causal-comparative research involves the selection of two distinct groups (Sumanto, 2020). The long historical lines of Indonesia and Malaysia differ in terms of land registration and dispute resolution. Indonesia and Malaysia were selected as case studies of this research. This study is aimed at analysing and identifying the differences between Indonesia and Malaysia concerning land registration systems. Identifying the land registration system in Indonesia and Malaysia will provide an overview of what has been done and what is required to improve land registration systems; to serve as lessons learnt in accelerating land registration in Indonesia, and to furnish and support recommendations for the government to strengthen future legislation.

IDENTIFYING LAND REGISTRATION CONSTRAINTS

Land registration at the land office serves to guarantee legal land possession, and to safeguard families and the welfare of future generations (Rahmi, 2019). It is expected that land registration may lead to a positive impact on the government, landowners, and third parties. Land registration procedures are important because it supports the management of sustainable development. This development has been conducted as an outcome of deliberate action by the community to achieve a better life (Ahyani, 2017). When the purpose of land registration is achieved, the country can enjoy fairness and prosperity. Rapid development and various requirements for securing proprietor interests have placed tremendous demands on land administration. The lack of speed in services and the lengthy process in securing property due to bureaucracy have also triggered the loss of investment opportunities for the country (Zulkifli et al., 2015).

One of the selected sample cases in Indonesia by Mahuli (2017) found that the constraints faced in the implementation of land registration at the National Land Office / ‘Badan Pertanahan Nasional’ (BPN) of Medan city, Indonesia were as follows:

- 1) Limited equipment and human resources
BPN of Medan city is short of human resources to handle the high number of land registration applicants. Besides, it also lacks land survey equipment.
- 2) Poor legal awareness by the community
Due to poor awareness by the community, many lands remain unregistered. To date, most people assume that registered land is referred to as land obtained via any letter issued by any government institution.
- 3) Inability to present adjacent neighbours and land boundaries
Applicants must be present at the land being surveyed. The majority of the applicants, however, could not take part in a series of survey activities. Based on Article 18 of Government Regulation No. 24 of 1997, applicants must be accompanied by their adjacent neighbours to convey or assert their agreement to land boundaries.

- 4) Use of illegal negotiators
The illegal broker only files for the land registry process and will not engage in the necessary follow-up agreements. Through the report, it can be inferred that the unauthorized negotiator will not be liable for any problems or shortfall before issuance of the land certificate.
- 5) People's ignorance of PRONA
PRONA (The National Agrarian Operation) is one of the Indonesian Government's attempts to boost the wealth of the people. PRONA is not meant to replace the process of land title registry governed by the Government Regulation No. 24 of 1997. PRONA is a form of legalizing asset activity and, it is essentially a land administrative process which includes: adjudication, land registration, and publishing land certificates which is held on a large scale. The PRONA project is temporary to begin with, however, many people are unaware of the project.
- 6) Remote location for land administration
Medan is a large city with a land area of 265 km², and its neighbourhood areas are far removed from the Medan City National Land Office. This situation has contributed to a lack of commitment to register lands at the National Land Office/BPN.

The definition of land registration according to Article 1 clause 1 of Government Regulation No. 24 of 1997 is a set of operations conducted by the government on a constant, continuous and routine basis, including bookkeeping, compilation, preservation, display and processing of juridical and physical records, in the form of lists and maps concerning parcels of land and units of flats, and the awarding of certificates of proof for plots of land rights on which there are rights and ownership rights over flats, and those rights that burden it. The land registration system in Indonesia seems to experience dualism in the recognition of land ownership rights. There is a recognition of the owner based on the recognition of the local community. However, there is also the recognition based on a certificate as proof of registration of land rights. The recognition of both has led to a dilemma, which has triggered debates on justice and legal certainty issues. The recognition of land rights based on certificates is less legitimate from the community's point of view. Debates on recognition (legitimacy) of land has affected justice and legal certainty over land rights (Sinaga et al., 2016).

Meanwhile in Malaysia, according to Salleh et al. (2017) the issues or weaknesses in law that arise are related to land administration, which include corruption in land administration, squatters, and the validity of temporary occupation licenses (TOLs) of land. Research by Samsudin (2011) in her article has revealed that all responsibilities concerning land is under the same administration especially in Sabah and Sarawak. Land possession, land use and land administration are all under the same administration. Each state's administrative duties are carried out by the same person, namely, the Director of Land and Survey. This framework offers greater accountability and helps speed up matters relating to property, as all operations take place under the same administrative responsibility. However, in Peninsular Malaysia, public survey, land use planning, and land registry are not combined. Land management is governed by the District Land Office and organized by the Office of Land and Mining. Land management is handled by the Department of Survey and Mapping Malaysia (DSMM). The valuation and property services department is under the Federal Ministry of Finance while the town and country planning (T&CP) department is under the Ministry of Housing and Local Government. There is a need for wise arrangements regarding the authority between each department in order to provide convenience and not unnecessary bureaucracy.

Land registration, if examined more closely, contains various aspects; among others, economic and social aspects. The slow and unresolved land registration process can also lead to new issues such as unlawful occupation/squatters. Under the National Land Code (NLC), occupying lands belonging to others including government land is an offence (Salleh et al., 2017). The law in Malaysia stipulates squatters as trespassers who occupy land unlawfully. They do not possess any legal rights. Although some squatters understand the laws concerning squatting, they do not take it seriously (Ibrahim et al., 2012).

Illegal occupation of land rights can be in various forms. It can even be followed by certificate duplication and/or certificate forgery, or other combinations of actions known as fraud. Fraud in the title register often creates concern for house owners as it is a breach of property rights (Abdullah et al., 2017). Among the most common occurrences is the falsification of: original court order, identification card, issue document of title (IDT), power of attorney, signature, and transfer form (Form 14A), besides impersonating as an estate agent or as an

occupant. Abdullah (2017) in her article has concluded that the number of cases concerning fraud involving title registration in Malaysia is not showing any decline. She surmises that it sufficiently proves that the title registration system in Malaysia is susceptible to fraud. Apart from the inherent weaknesses of land statutes, enhanced effort should be undertaken to ensure that the registration system is fraud-proof, reliable, safe, and secure. System security should be improved to diminish fraud. Audits should be conducted more frequently to detect any system abnormalities. Access control to the system should also be tightly regulated. Special officers should be allowed to conduct specific tasks in the system; involving several officers is a good way to prevent insider fraud.

Research conducted by Harun (2012) has also provided recommendations to minimize fraud, such as expanding the implementation of the biometric system in matters concerning transfer of land rights, improving security with electronic notifications/notices to land owners, and the need to clarify definitions and elements that fulfil fraud in the National Land Code (NLC). This is also confirmed by Harun and Hassim (2015) that the NLC as the highest law in Peninsular Malaysia regarding land registration matters need to ensure justice for concerned parties, especially in order to defend and maintain the trust of bona fide buyers or good faith in the purchase of land.

BENEFICIAL OWNER VS CONFIDENTIAL DATA OF LAND OWNERSHIP

Proof of ownership is the main thing in formal and material evidence. If a problem occurs, this evidence shall guarantee legal certainty in the future. Proof of formal and material ownership of land shall be accountable and in accordance with factual data. The Torrens system in Malaysia is a system of land ownership that ensures that the person recorded as the land owner is the true owner. The register is conclusive evidence that the person named therein, as the proprietor of an interest in the land, is the legal owner of that interest (Zulkifli et al., 2015). Thus, there is no evasion of law affecting third parties specifically or the country in general since such practice can cause losses due to invalid or non-transparent information of land rights.

Land registration requires caution to prevent such malpractices and to create systematic land data for the benefit of the country's future development. So far, two issues need to be more widely discussed in Indonesia and Malaysia, namely issues related to beneficial owners and land ownership data protection. These two issues are contradictory because the beneficial owner applies the principle of transparency while protecting data concerns privacy. According to Zulkifli et al. (2015), Malaysia has a different practice of using the cadastre, which records property boundaries under the authority of the Federal Ministry. The Federal Ministry also sets its own laws while the extent of the state's reliance upon the Federal Ministry is highly unpredictable. This has resulted in separate investigations being made about the right to possession and right to use, which has led to discrepancies and overlaps in policies. Thus, it is recommended that data sharing amongst the different agencies is crucial.

A typical use of the word beneficial ownership is in relation to property. These rules are imposed in Malaysia as a way to regulate land matters. In Malaysia, the definition of beneficial ownership in the Securities Industry Act of 1991 is perhaps the most useful guide. According to Nik Abdul Ghani (2018) it contains the following:

Beneficial owner in relation to deposited securities who is the person who is entitled to all rights, benefits, powers and privileges and is subject to all liabilities, duties and obligations in respect of, or arising from, the deposited securities, and does not include a nominee of any description.

It is readily evident that the advantageous owner is the rightful owner and has both the title and other true owner rights. Furthermore, if a conflict between the legal and the beneficial owner arises, the courts' ruling in deciding the true owner will go to the beneficial owner, since the legal owner is simply considered a guardian, holding the land for the benefit of the beneficial owner (Nik Abdul Ghani, 2018).

There are many court decisions in Malaysia applying the principle of equity in recognising beneficial or equitable ownership. This can be seen in *Kersah La'usin v. Sikin Menan* [1966], 2 MLJ 22; *Munah v.*

Fatimah [1972], 2 MLJ 158. In *Othman v. Mek* [1972], 2 MLJ 158, the Supreme Court ruled that upon payment of the price and delivery of ownership of the land, the owner had gained full title to the land. In relation to the vendor, who had the legitimate right to obtain full title to the property transferred to him, the donor's right to transfer title to the land was untouched by any restriction period or laches (Nik Abdul Ghani, 2018).

Beneficial ownership requires the willingness of the government to implement transparency which concerns the achievement of good governance. Beneficial ownership can detect land ownership that is unqualified and does not meet the necessary requirements. In observing the regulation of land ownership in Indonesia, the principle is still a matter of pros and cons, namely the interpretation of the State's Right to Control / '*Hak Menguasai Negara*'. The Constitutional Court in its several decisions, namely decision No. 36 / PUU-X / 2012, decision No. 058-059-060-063 / PUU-II / 2004, and decision No. 001-021-022 / PUU-1 / 2003 have granted the State's Right to Control / '*Hak Menguasai Negara*' towards the earth, water and natural resources and requires the state to carry out limited to 5 (five) functions, namely, the policymaking function, management function, regulatory function, management function, and control function. The Constitution and the BAL mandate the state to control land, but not to own land. Article 2 clause (1) of the BAL mentions that all of the earth, space, water and natural resources managed by the state are protected at the highest level. Beneficial ownership reflects the peoples' power since it helps the public to know generally who owns each parcel of land in their country whether it is qualified, unqualified, unlawful, etc.

To date, Indonesia still needs to complete the registration documentation of all land rights, in order for it to be integrated into a land data bank as the country's vital archive and also for the implementation of beneficial ownership principles. According to Palilingan et al. (2019), in general, the vital archive has a number of roles: (1) as a data record of land registration connecting landowners with their lands; (2) as evidence of the correctness of the certificate issuance procedure; (3) as evidence of land ownership rights by the right holder; (4) vital archive is a reference document for future corrections; and (5) as a dispute resolution document.

Integration of land registration data as a vital archive connected with land ownership can pre-empt land smuggling, legal irregularities and money laundering practices. According to Palilingan et al. (2019) there are several things that can be proven through vital archive which are as follows:

- 1) Proof of fulfilling the ‘*Contradictory Delimitatie*’ principle can be identified from measurement data (drawings) documents and the signatures of adjacent neighbours. ‘*Contradictory Delimitatie*’ is the principle contained in Article 18 of Government Regulation No. 24 of 1997 which means that in order to prevent disputes over the determination of land parcels, it is necessary to establish land parcels by BPN that are witnessed and approved by land owners and parties directly adjacent to the land to be registered.
- 2) Proof of land site and size correctness can be identified from the map of the plot of land.
- 3) Proof of continuous control can be identified from the vital archive in the form of physical land ownership statement letter and that it is recognised by the local government.
- 4) Proof of good faith in land acquisition can be identified from transitional evidence used as vital archive such as a deed of grants, deed of sale and purchase, and others.
- 5) Proof of fulfilling the publication principle can be identified from documents in the form of an official report.
- 6) Proof of prudence application in land registration can be identified from the minutes of land inspection.

STRENGTHENING LAND ADMINISTRATION ABILITIES

The Malaysian land law system adopts the Australian Torrens system, provided that the register is everything and conclusive evidence shall be obtained from the register. Land registration under the Torrens system provides a person with an indefeasible title to the property as provided in Section 340 (1) of the NLC. The ownership of a property is transferred through title registration instead of using deeds. The main purpose is to simplify land transactions and give ownership of an absolute title to the property of the registered proprietor (Mohammad et al., 2017).

Under Article 76 of the Federal Constitution of Malaysia, land is a state matter. This explains why land administration in Malaysia is carried out through the management of land issues by the federal authority. At present, states are responsible for land issues in the region. These states protect their capital by joint governmental roles such as the State District Land Office and State Land and Mining Office. On the other hand, official mapping surveys are supervised by the Federal Department of Survey and Mapping (DSMM). The DSMM is responsible for designing the survey method for Peninsular Malaysia. The surveys are undertaken by licensed land surveyors. Cadastral survey and land registry are administered by one government agency that offers similar services throughout the regions in Sabah and Sarawak (Zulkifli et al., 2015).

The Indonesian land administration is performed by the National Land Agency under the instructions from the Bureau of Public Works in Jakarta. At the provincial level (in Indonesia's 34 provinces), district departments of the government sector are responsible for approving or disapproving, directing and controlling land administration and cooperation while district offices or '*Kantor Pertanahan*' offers services to the population. Despite the centralization of policies across Indonesian cities, there is a difference in the time taken to register property (Monkkonen, 2013).

Land registration is not merely limited to the process of legalising land assets that have not yet provided justice for ownership of land rights. Other forms of affirmation in land registration activities can be conducted by the government so that the regulation and the use of land rights can benefit the community.

Land registration in Indonesia is divided into two types, namely sporadic and systematic. Sporadic is the activity of land registration for the first time regarding one or several objects of land registration in the territory or parts of a village, individually or in bulk. While systematic is the first land registration activity that is carried out simultaneously covering all objects of land registration that have not been registered in one area or part of the territory of a village. The two types of land registration aim to accelerate the process of land registration, either the implementation of mass or the purpose

of mass parcels of land. The mass land registration in a very short target duration without adequate facilities, human resources, and infrastructure have created significant obstacles to the project. The mass land registration project is not based on careful planning taking into consideration the capabilities of the implementers. The National Land Office (BPN), as the implementing land registration agency in Indonesia, has very limited human resources to handle an extremely high volume of services. As a result, the issuance of proof of rights for mass land registration does not consider the formal and material correctness of title certificates since the program focuses on achieving the target duration and quantity (Setiabudhi et al., 2019).

Malaysia is well known for maintaining a distinct governing agency norm of land records under the Federal Ministry. The state government has authority over taxes and property rights for various schools. The Federal Ministry also sets its own laws while the extent of the state's reliance upon the Federal Ministry is highly unpredictable. Because of these contradictions and conflicting problems, two separate investigations were made regarding the right of possession and the right to use, resulting in misunderstanding and duplication. This has led to data inaccuracies that must be corrected. It is necessary for agencies to combine different types of data (Zulkifli et al., 2015).

The division of authority over land affairs between the central government and regions, such as in Indonesia and Malaysia, certainly needs to be clarified. The effectiveness and responsiveness of the government in resolving issues related to land affairs can have a positive impact in addressing issues concerning land registration. However, evidence has shown that miscommunication still occurs between the central and regional roles. Sometimes this is not only related to the legalisation process but also related to the land registration services budget. The distribution of authority is one of the principles that may be able to provide benefits in state administrative law, especially in terms of check and balance, in creating mutual oversight and balance between government institutions.

Indonesia's centralised land administration has exhibited ineffectiveness and inefficiency in responding to local diversities. Besides, the civil law system seems to be merely normative when it

comes to the court, resulting in the court's decisions being made on a uniformity basis. As a result, discrepancies and multiple normative orders exist. It is anticipated that the deficiencies could be minimised through decentralisation and local autonomy programmes, providing local government with greater authority concerning land affairs. Besides, the state's right to agrarian resources should be reinterpreted. It is also expected that the decentralised land system could trigger more public awareness, consensus, and participation to encourage effective and sustainable land use and management (Daryono, 2010).

AFFIRMING LAND RIGHTS OWNERSHIP

Land registration is an affirmation of land rights. This provides a space for affirmation by the government to the community in protecting the right to life of their citizens, the right to land. Land policies which ensure the security of land rights, sustainable management of land resources, and well-functioning land market that contribute to economic development, efficient public service delivery, environmental conservation, and social stability and security (World Bank Group, 2017).

One of the affirmations carried out by the Indonesian government is the affirmation of the old rights that existed prior to Indonesia's independence, such as customary land or western land rights such as '*Eigendom*', '*Erpacht*', and '*Opstal*'. *Eigendom* is known as ownership rights and is the highest individual rights in the Western Land Law. *Eigendom*'s rights are regulated in Article 570 of the Civil Code. *Erpacht* is known as the right to use business or material rights to fully enjoy land owned by other parties in the Western Land Law. *Eigendom*'s rights are regulated in Article 720 and Article 721 of the Civil Code. *Opstal* is known as a property right to own buildings or plants on someone else's land in the Western Land Law. The rights of *opstal* are regulated in Article 711 of the Civil Code.

This was mandated by the BAL, a law indicating the end of the Dutch legislation and the beginning of the BAL as the unification of land law. This law still needs to be strengthened as one of them relates to certainty over ownership. This is due to the fact that this law

recognises that transactions related to land are legal even though land registration is not carried out because customary law only requires the existence of cash / ‘*tunai*’ and clear / ‘*terang*’ principles as a condition for the validity of land-related transactions. This potentially creates the inability of communities to register land or rights that they obtain from buying and selling of land as well as informal land occupation.

Another problem is that there is a typical occupation of land not following the classification of regulated land rights. As in the case of unclear communal land ownership status by indigenous peoples in Indonesia, the certification of communal land is a violation of existing regulations due to both, Government Regulation No. 24 of 1997 and the BAL.

In Malaysia, the Department of Survey and Mapping (JUPEM) is responsible for managing and maintaining the cadastral system. JUPEM deals with cadastral surveys to determine the dimension, size and location of properties. JUPEM is also responsible for preparing certified plans, producing and managing spatial components including surveying and mapping of cadastral parcels (Tan et al., 2015).

To defend against fraud, it is important to put in place strategic steps to minimise its potential. Besides the fundamental shortcomings of property laws concerning the issue of indefeasibility leaves original proprietors uncompensated when their land is transferred to innocent third parties, and the absence of State-guaranteed title insurance funds as a recourse to remedy for aggrieved parties, the land law scheme cannot do anything to shield them. While the electronic and paper land registry schemes suffer from flaws, they are incapable of withstanding theft and new forms of cybercrime. While title insurance is a suitable mechanism to protect against defects occurring in real estate, it appears to be an unsuitable mechanism in Malaysia because of the low general knowledge, prevalence, and subscription rate of general insurance among Malaysians. This suggests that public opinion is unlikely to consider title insurance appropriate in Malaysia. On top of that, if title insurance is needed, it would demonstrate the complexity, lack of trust, and unreliability of the land management system. This would present a negative impression to investors and the public about the government’s capacity to have a stable land management system.

Therefore, additional care should be taken to ensure the application process is safe, secure, and accurate (Abdullah et al., 2017).

LAND REGISTRATION IN PERSPECTIVE AS LEGAL INSTRUMENT

The provisions of the law are indeed hard because they have been made by the makers (the law has been determined as such) as a principle that is quite popular among law activists in Indonesia, better known as the '*Lex Dura Secta Mente Scripta*' principle. Supreme Court Decision No. 1069 K/Pid.Sus/2014, p. 11 explained that the *Lex Dura Secta Mente Scripta* principle means that the law is rigid and has been written. Therefore, no one can change it. Thus, judges or other law enforcers as the executors of law must carry it out purely and consistently. While the decision of the Ciamis District Court No. 155/PID.SUS/2013/PN.CMS, p. 63 in explaining the *Lex Dura Secta Mente Scripta* principle stated that the law is indeed cruel. Therefore, the law as a legal instrument, which has been passed by the state must be adhered to by all citizens to achieve order and justice. To create a law-compliant community, the law itself must be complete and does not lead to discrepancies in interpretations, which may confuse the people. It is believed that many people still assume that land registration has not been a legal instrument promoted by the law. As evidenced from the land registration in Indonesia, the BAL mandate to register all land parcels has not been accomplished since 1960. It is according to the total area of Indonesia, which is 191.686.220 hectares (Badan Pusat Statistik, 2019), while the total area of certified land is only 39.829.560 hectares (Kementerian Agraria dan Tata Ruang Republik Indonesia, 2020).

The issuance of the BAL marks the end of Dutch colonial law in regulating land-related issues in Indonesia. The principle in Article 2 clause (1) of the BAL states that earth, space, and water, and all of its natural resources are governed by the state, as an authoritative organization of all citizens. The words "controlled" does not mean "owned" but gives authority to the state as an organisation of all people to manage land, space, water, and natural resources including granting land rights to the public (Woruntu et al., 2016). BAL as the main basis means the need to be the main reference related to other

vertical/horizontal law concerning land and land tenure. BAL seeks to eliminate pluralist legal systems that have traditionally established land rights in Indonesia and to unify all land rights under one umbrella statute. Despite the fact that numerous legislation since 1960 have been adopted, some core aspects of the BAL's overall strategy have so far not been enforced (Daryono, 2010).

The urgency of the legal substance is first to systematically place the landowners and users in Indonesia. Second, to guarantee legal certainty and justice for landowners either as individuals or corporate entities; and third, to reduce land disputes in Indonesia (Sinaga et al., 2016). Research conducted by Nuragifah et al. (2018) has indicated that there are problems during the registration of property rights like the lack of knowledge of land registry. They argued that land office laws are too stringent. Another challenge is the time/opportunity, owing to the substantial distance which could be time-consuming, and expensive. The community's lack of information about the value of land registry is another challenge. Hence, they do not feel the need for their land ownership due to the amount of selling deals that are not in compliance with claims. Other issues include the presence of any land registered without the buyer's and seller's knowledge, and land registration that is not performed systematically.

Matters regarding title registration in Peninsular Malaysia are handled by the state and related departments at the district level. Land offices are mainly responsible for aggregating, partitioning, and subdividing land, executing land sales, raising revenue, handling land applications, registering land titles, and other related matters (Tan, 2013).

Land registration as a state legal instrument is also expected to be able to reduce price increment for residences in the property market. With systematic land data bank, area mapping can be used to identify affordable housing development. In a study by Bilal et al. (2019) they concluded that house prices in Malaysia are consistently above the affordability standard since 2004 which is three times of the gross household income. In the latest 2020 data, house prices are still above the gross household income as evidenced for example, in several areas such as Kuala Lumpur, Penang, and Selangor which show the following price-income ratio (PIR) of 11.05, 8.79, and 12.07, respectively (Numbeo, 2020).

CONCLUSION

Land registration is not a new issue. The authors found numerous writings concerning land registration issues either in Indonesia or Malaysia. The results concluded that both Indonesia and Malaysia are still facing land registration issues. The existing land registration system differences in Indonesia and Malaysia, where deed registration in Indonesia refers to the BAL and title registration (Torrens) in Malaysia refers to the NLC indicate that these differences do not significantly impact the reduction of cases and land ownership conflicts, especially with reference to the aforementioned data related to Land Dispute Resolution Index by the World Bank.

Despite this, the issue of land registration will remain in the society because land registration is closely related to cultural, economic, political, social, and other aspects. There is a strong need for improvement of roles from two main stakeholders, namely the government's role in streamlining land registration administration and the community's participatory role in supporting successful land registration. This research also provides important input in strengthening human resources, land administrators, digitizing services, reinforcing the principle of ownership of land rights and guaranteeing legal certainty for land registration rights holders.

Other than that, the BAL in Indonesia and the NLC in Malaysia serve as basic rules and main laws concerning land and land tenure, which play a critical role in building a just and prosperous society. This paper also provides recommendations for academicians, government/institutional leaders, and legislators to assess and strengthen the BAL continuously as the fundamental principle of land law in Indonesia, especially in strengthening the land registration system and legal certainty concerning land registration. Therefore, formal and material content in the BAL must be clear and devoid of horizontal or vertical inconsistencies with other laws.

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