

# Politics of Law Due to the Protection of Land Rights Holders Based on the *Rechtsverwerking* Principle

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**Abstract**— As is known that legal politics has 2 (two) dimensions. These dimensions include *ius constitutum* (applicable law) and *ius constituendum* (the law that is reported). The stigma that law is a political product is true along the *das sein* if it is based on *das sein* by conceptualizing the law as a statutory regulation. Acquainted with the relationship between law and politics can be based on the views of *das sollen* (desires, necessities) or *das sein* (reality). There is a difference in scope between legal politics and legal political studies, the first being more formal in official policy while the second includes official policies and matters related to them. Thus, the study of legal politics comprehends at least three things: First, state policies (official lines) concerning the law that are not enforced or are not implemented in the context of achieving state objectives. Second, economic, social, cultural background that underlies the birth of legal products, Third, law enforcement in the reality of the field. In this research, the focus will be on the study of law enforcement in the reality of the field, especially in judicial institutions. This study examines the Politics of Law for the Protection of Land Rights Holders based on the *Rechtsverwerking* Principle. By using normative legal research methods which are based on research on legal principles, the researcher uses a qualitative approach to support legal arguments produced based on inductive reasoning.

**Keywords:** *politics of law, protection of land rights holders, Rechtsverwerking*

## I. INTRODUCTION

UUPA, which took effect on September 24 year 1960, has eradicated and changed the land system of the Dutch government which was individualistic with a dualism system that became family based on the concept of customary law that applied a unification system with codification. Land Law does not regulate land in all its

aspects. He only regulates one of the juridical aspects called the control rights over the Land. Land is the surface of the earth, and land rights are the right to use the land only.

Land Law is the whole legal provisions, there are also written ones that are not written, all of which have the same object of regulation, namely tenure rights over land as legal institutions and as concrete legal relationships, public and civil, which can be arranged and studied systematically, so that the whole becomes one unit which is one system.

The certificate of land rights is a legal product issued as a result of the holding of land registration. Land registration is held in order to provide legal certainty in the land sector. Land registration in Indonesia has an important meaning because everyone has the right to obtain legal protection. To provide legal protection, there is a need for legal certainty, because legal certainty for holders of land rights has broad implications for the joints of the life of society and the state and therefore an objective thought is based on legal norms so that it does not negatively affect the implementation of national development . With regard to efforts to provide legal certainty in the land sector, namely to holders of land rights, the implementation of land registration from several groups, namely the government and all levels of society and requires support, especially support from holders of land rights.

The purpose of legal certainty in the field of land, especially land registration is to provide legal protection for holders of land rights. At this present, Indonesia is in a chaotic condition, crisis conditions in various fields including the legal sector. The law which is expected to

provide justice for the people turns out to be the opposite. The effectiveness of enforcement only applies to communities who commit minor crimes. In this case it is indeed necessary courage for the community, especially law enforcement officers to make breakthroughs in resolving the cases.

Therefore, there are a divergence between *ius constitutum* and *ius constituendum*. *Ius constitutum* refers to law that applies in a country, in a mean time. *Ius constituendum* refers to the law that be aspired to by the society, that had never been in statute or else. As Teuku Mohammad Radhie once state that Political Law is a statement of the will of the ruler concerning the law that applies, and the development of the law. In his statement, we can see that there's *ius constitutum* and *ius constituendum* in political law.

This paper will discuss its research in political law studies, concerning about how are the political law for the protection of land rights holder based on the rechtsvwerkingprinciple?

## II. DISCUSSION

There is a difference scope between political law and political law studies, the first is more formal, like official policy, while the second covers official policies and matters related to them. Thus, the study of legal politics includes at least three things: First, the state policy (official line) about the law that will be enforced or not applied in the context of achieving state goals. Second, political, economic, social, cultural background the birth of legal products. Third, law enforcement in reality. As a consequence that this paper is a political law studies, this paper will specified its analytical criticism upon the judge verdicts concerning the land's right dispute.

This study departs from the basic assumption that law is a political product that views law as a formalization or crystallization of political wills that interact and compete with each other. From a perspective like this, this study focuses its attention on legal politics in Indonesia by conceptualizing and determining certain indicators. The study also saw that among the ahi there were still differences of opinion about the location of legal politics. Some see it as part of law. If law is likened to a tree, then philosophy is the root, whereas politics is the tree which then gives birth to branches in the form of various

legal fields such as civil law, criminal law, constitutional law, state administrative law and so on.

If there are questions about causal relations between law and politics or questions about whether laws affect politics or politics that affect the law, then there are at least three types of answers that can explain it. First, the law of determinants of politics in the sense that political activities are governed by and must be subject to legal rules. Second, political determinants of law, because law is the result or crystallization of political wills that interact and (even) compete with each other. Third, politics and law as a social subsystem are in a position where the degree of determination is balanced between one another, because even though the law is a product of political decisions but once the law exists, all political activities must be subject to legal rules.

be once constricted the relationship between law and politics in Indonesia like a locomotive journey of trains that coming out of its tracks. If the law is likened to a rail and politics is likened to a locomotive, it is often seen that the locomotive comes out of the railroad that should be passed. Legal relations with power can be formulated briefly in the slogan as follows: "Law without power is wishful thinking, power without law is tyranny."

In its implementation, the law requires a power to support it. It is this main characteristic that distinguishes between law on the one hand and other social norms and religious norms. Power is needed because the law is compelling. Without the power of law enforcement in the community there will be obstacles. Hence the attached table is the resume of the verdicts that would be a main discuss to this paper:

**Resume of Land's Right Dispute**

No.	Dispute	Verdict's Number	Result
1.	Lim Setiawan against Santoso (The Heir of Lim Beng Giok, cs)	59/Pdt.Plw/2015/PN.JKT.PST	<ul style="list-style-type: none"> <li>▪ Cancel the ex-SHGB 1125/Kebon Kelapa.</li> <li>▪ Proclaim that Santoso is the rightfull owner of the land at Jl. Batu Ceper Number 48 and everything that above it,.</li> </ul>
		209/PDT/2016/PT.DKI	Strenghtning the verdict number No. 59/Pdt.Plw/2015/PN.JKT.PST
		245/G/2015/PTUN.JKT	Accept the Absolute Exeption
		123/B/2016/PT.TUN.JKT	Strenghtening verdict No. 245/G/2015/PTUN.JKT
		487K/TUN/2016	<ul style="list-style-type: none"> <li>▪ Cancelled the SHGB 2690/Kebon Kelapa</li> <li>▪ Ordered BPN Jakpus to cancelled the SHGB 2690/Kebon Kelapa</li> </ul>
		176/PK/TUN/2017	Rejected
2.	Theresia Budina against BPN Jakbar and Theodorus Kemal Tjandra also Luwiningsih Tjandra	114/G/2007/PTUN.JKT	<ul style="list-style-type: none"> <li>▪ Cancelled Batal SHM No. 454/Tamansari</li> <li>▪ Obligated BPN Jakbar to cancelled SHM No. 454/Tamansari</li> </ul>
		65/B/TUN/2008/PT.TUN.JKT	Cancelled verdict number 114/G/2007/PTUN.JKT
		283K/TUN/2008	Cancelled verdict number . 65/B/TUN/2008/PT.TUN.JKT
3.	Ni Made Damu against I Dadi	124/G/PDT/2014/PN.GIN	The claim can not be accepted
4.	Go Ferry Gunawan against Dernawati	86/G/2014/PTUN.SBY	Cancelled SHM No. 843/Lontar
		80/B/PT.TUN.SBY	Cancelled verdict number 86/G/2014/PTUN.SBY
		670/K/TUN/2015	Rejected

From the resume above, we can see that there's still a rejection and cancelation to the land's certificate that has been published over 5 years. Its cancelation cause a distortion to the *rechtsverwerking* principle that the Indonesia land law embrace to. As we both know that the land registration in Indonesia adhere to negative system that had a slight of positive factor to it. It is caused by that the main source of land law system in Indonesia is a native law that known the *rechtsverwerking* as its principle, that as a consequences of time passing, someone lose its right. It is stated at the explanatory of the government rules number 24 year 1997 about land registration, article 32 paragraph 2.

But the irony are that much of practioners don't pay much attention to the *rechtsverwerking* principle itself, especially the judges. As the principle of law, *rechtsverwerking* is the heart of the law itself. Like Prof. Satjipto Rahardjo frequently said that principle is the heart of the law. Without it, we can not understand the ethics behind the law. Law are made for the humans, non reversiable.

With regard to the provision of legal protection in the land sector, it requires: First, Availability of written and a certainty of legal instruments, also a consistent of its implementation. Second, the effective land registration. With the availability of written legal instruments, anyone who has an interest will easily find out what possibilities are available for him to control and use the land he needs, how to obtain it, what rights, obligations and prohibitions are in control of the land with rights. certain rights, sanctions for what they face if they are ignored by the relevant provisions, as well as other matters relating to the possession and use of the land they own.

Given the importance of land for the Indonesian people, the relationship between land and its rulers must be based on the basis of legal rights, which are protected by law. The certificate of land rights is a legal product that serves as a proof of strong rights for the person whose name is listed on the certificate he has.

In relevance giving the legal certainty to the land rights holder, UUPA entrust specifically in article 19 to guarantee the legal certainty is to establish the land registration by the government. As the consequences, the government c.q the national land agency (Badan

Pertanahan Nasional) enforce the land registration under the government regulation number 24 year 1997 and produce the land's certificate that gives a clarity about the actual rights holder. However, the strength as the evidence is not absolute. Cause by the negative system that Indonesia adhere to.

### III. CONCLUSION

So as the conclusion, there's still not enough protection to the land's right holder base on the resume of the verdict stated above. If we focus on the political law concept itself, then we will have 2 conclusions:

First, the law that applies (*ius constitutum*). The law that applies in Indonesia concerning about the land's right holder, is still weak. Proven by the resume verdicts as stated in discussion above, that the land's certificate is still had a chance to be cancelled, even if it is already passed 5 years since it has been published.

Second, the development of the law. If there's still a missjudged verdicts like that, it would caused a distortion to the land law itself.

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