

## Comparative Study of Land Registration in the State of the Republic of Indonesia and the Republic of Singapore

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### Abstract:

This research aims to compare the value of certainty and protection of protection of land law in Indonesia and Singapore which aims to provide certainty and legal protection. This type of legal research is normative legal research. The method of approach used is legislation, conceptual and comparative approach. Based on the research that is registration of land in Indonesia is regulated in Law of the Republic of Indonesia Number 5 Year 1960 Article 19 BAL (Basic Agrarian Law/ *Undang-Undang Pokok Agraria*), and in Singapore regulated in Land Titles Act (LTA) Chapter 157 Year 2015. There are similarities and differences in registration of land, among others, Indonesia and Singapore adopt the right registration system (*Torrens*). Indonesia adopts negative publication of positive tendency system that produces certificate as a strong evidence and existence of *rechtsverwerking* institution (Government Regulation of the Republic of Indonesia Number 24 Year 1997 Article 32) while in Singapore adopt positive publication system that generates certificate as absolute proof (LTA 157 Year 2015 Article 36) and the presence of *caveat* as a form of legal protection. It is expected that by changing the registration of land law in Indonesia can provide absolute legal certainty and legal protection in registration of land as in Singapore.

**Keywords:** Comparative; Registration of Land; Indonesia; Singapore

### INTRODUCTION

Registration of land in Indonesia must be in accordance with Pancasila, the 1945 Constitution of the Republic of Indonesia (UUD 1945) Article 33 paragraph (3), Basic Agrarian Law (BAL) and GR No. 24 Year 1997 (hereinafter GR of the Republic of Indonesia No. 24 Year 1997) and regulation which is the legal basis for national land.

While dealing with registration of land constraints in Singapore, which arise at the limitations of land owned, and as an unlimited commitment, the Singapore Government provides solutions and innovations through the Ministry of Law which appointing the Singapore Land Authority (hereinafter SLA) is a statutory board under the Ministry of Law whose mission is to optimize the land resources for economic and social development in Singapore.

The land register shows who owns the land and whether there are encumbrances, such as mortgages or charges affecting the land. Registration of land also shows who owns the land and whether there is any charge, such as mortgage rights or other charges that affect the land.<sup>1</sup> Registration of land in Singapore is governed by the Land Titles Act Chapter 157 Version 2015 (hereinafter LTA Chapter 157).

In registration of land there is several registrations of land systems adopted by many states that have organized registration of land.<sup>2</sup> In capitulation, two publication systems are known, namely: positive publication system and negative publication system.<sup>3</sup> Indonesia and Singapore are the States that have carried out registration of land and adopted different registration of land systems, which have been adapted to the materiel law of each State.

A study of registration of land system is essential, at least since registration of land provides legal certainty of land ownership for the person whose name is in the certificate and prevents land tenure disputes. Although it has received recognition in the BAL, it has not guaranteed the legal certainty of its ownership because in its own rules it provides an opportunity wherever there are other parties who feel ownership of the land may sue those who are listed in the certificate to the General Court, or sue the Head of Land Office (hereinafter HLO) concerned to the State Administrative Court, or a lawsuit concerning the technical administration of its issuance.<sup>4</sup>

The focus of this paper will discuss the regulation of registration of land in the State of the Republic of Indonesia and the State of the Republic of Singapore and the implementation of registration of land under the law of agrarian in both countries.

## METHOD

The method used in this research is the normative legal research, where the law is seen as optical to see whether a behavior is right or wrong. The approach used is the Statutory, Conceptual Approach, and Comparative Approach.

## RESULT AND DISCUSSION

### Regulation of Registration of Land in Indonesia

There are several notions of understanding of registration of land as follows: A.P. Parlindungan stipulated the meaning of registration of land, that is:<sup>5</sup>

“Registration of land is derived from *Cadastre* (Dutch: *kadaster*) a technical term for a record, indicating to the extent, value and ownership (or other rights) to a plot of land. This word is derived from the Latin "*Capistratum*" which means the register or capita or unit that is made for the Roman land tax (*Capotatio Terrens*). In a strict sense, *Cadastre* is a record on the lands, the value of the land and the rights holder and for the interest of taxation. Thus, the *cadastre* is an appropriate tool that provides description and identification as well as continuous recording of the rights to the land”.

According to Boedi Harsono that:<sup>6</sup>

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<sup>1</sup> <http://www.sla.gov.sg/About-SLA/Vision-Mission-and-Values>, by: Singapore Land Authority, accessed on Friday 27<sup>th</sup> March 2017.

<sup>2</sup> Arba. (2015). *Hukum Agraria Indonesia*. Jakarta: Sinar Grafika. p. 154.

<sup>3</sup> Boedi Harsono. (2005). *Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*. Jakarta: Djambatan. p. 80.

<sup>4</sup> Adrian Sutedi. (2014). *Sertifikat Hak Atas Tanah*. Jakarta: Sinar Grafika. p. 2-3.

<sup>5</sup> A.P. Parlindungan. (2009). *Pendaftaran Tanah di Indonesia*. Bandung: Mandar Maju. p. 18-19.

“Registration of land shall be a series of activities undertaken by the State/ Government continuously and regularly, such as gathering information or certain data concerning certain lands in certain areas, processing, storage and its presentation for the benefit of the people, in order to provide legal certainty in the land sector, including the issuance of its evidence and its maintenance.”

Registration of land in GR of the Republic of Indonesia No. 24 Year 1997 is a refinement of the scope of registration of land activities pursuant to Article 19 paragraph (2) GR of the Republic of Indonesia No. 10 Year 1961 which covers only: measurement, mapping and accounting of land, registration and transferring of land rights and letter of proprietary as a strong evidence.<sup>7</sup>

Interpretation of registration of land in accordance with the provision of Article 1 paragraph (1) of GR of the Republic of Indonesia No. 24 Year 1997 is a series of activities undertaken by the government continuously, chronically and regularly, including collection, processing, accounting, and presenting as well maintaining physical data and juridical data, in the form of maps and lists, including the transfer of letter of proprietary to the existing plots of land with existing right sand ownership right of strata title as well as the specific rights that discommode it. Object of Registration of land when associated with a registration of land system using a registration of titles not a registration of deed system.<sup>8</sup> Registration of land activities for the first time produced a letter of proprietary, such as certificate.<sup>9</sup> Land is part of the earth's surface, which is a unit of limited field. Registration of land for the first time can be conducted in a systematic and sporadic way.<sup>10</sup>

### **Implementation of Registration of Land Pursuant to Agrarian Law in State of the Republic of Indonesia and Land Law in State of the Republic of Singapore**

The registration of land in Article 19 paragraph (2) of BLA is further elaborated in GR of the Republic of Indonesia No. 24 Year 1997, that is the first registration of land activity (*Opzet* or Initial Registration) is registration of land conducted on the object of registration of land that has not been registered based on GR of the Republic of Indonesia No. 10 Year 1961 or GR of the Republic of Indonesia No. 24 Year 1997. Registration of land for the first time was carried out through the registration of land systematically and registration of land sporadically namely:<sup>11</sup>

- (a) Registration of land systematically is registration of land for the first time conducted simultaneously including all registration objects that have not been registered in the territory or part of a village/urban community (Article 1 paragraph 10 GR of the Republic of Indonesia No. 24 Year 1997) systematically implemented by the Head of Land Office Regency/City assisted by the Adjudication Committee.
- (b) Registration of land sporadically is be the first time of registration of land concerning one or more objects of registration of land within the territory or part of a village/ urban community individually or massively (Article 1 paragraph 11 GR of

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<sup>6</sup> Boedi Harsono. *Op. Cit.*, p.72.

<sup>7</sup> Mhd. Yamin Lubis and Abd. Rahim Lubis. (2008). *Hukum Pendaftaran Tanah*. Bandung: Mandar Maju. p. 15.

<sup>8</sup> Urip Santoso. (2010). *Pendaftaran dan Peralihan Hak Atas Tanah*. Jakarta: Kencana Prenada Media Grup. p. 13.

<sup>9</sup> Urip Santoso. *Ibid.*, p. 42.

<sup>10</sup> Sahnun. (2016). *Hukum Agraria Indonesia*. Malang: Setara Press. p. 104.

<sup>11</sup> Urip Santoso. *Op. Cit.*, p. 32-33.

the Republic of Indonesia No. 24 Year 1997) and implemented on individual or mass solicitation.

In Article 5 of GR of the Republic of Indonesia No. 24 Year 1997, registration of land is held by NLA (*Badan Pertanahan Nasional*/ National Land Agency hereinafter NLA), and when it comes into force it is a service in the Department of Justice, then incorporated into the Ministry of Agrarian Affairs and having its own office as Land Registry Office and its superior agency is the Head of Supervisory and Registration of Land Office, and its subsequent superior is Registration of Land Office.<sup>12</sup>

Compared to the previous cabinet, President Joko Widodo creates numerous of changes to the organization and workings order of some ministries.<sup>13</sup> Related to this, there is a new ministry deals with agrarian and land issues. In accordance with Presidential Regulation of the Republic of Indonesia Number 165 Year 2014 State Gazette Number 339 on the Arrangement of Duties and Functions of the Kabinet Kerja (hereinafter PR of the Republic of Indonesia No. 165 Year 2014), the ministry intended is the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (hereinafter Ministry of AASP/NLA).

NLA was initially regulated by Presidential Decree of the Republic of Indonesia Number 26 Year 1988, then added with Presidential Decree of the Republic of Indonesia Number 154 Year 1999, amended by Presidential Decree of the Republic of Indonesia Number 95 Year 2000, then amended by Presidential Regulation of the Republic of Indonesia Number 10 Year 2006, then amended by Presidential Regulation of the Republic of Indonesia Number 63 Year 2013 and lastly amended by Presidential Regulation of the Republic of Indonesia Number 20 Year 2015 (hereinafter PR of the Republic of Indonesia No. 20 Year 2015) on NLA. Further in Article 6 of GR of the Republic of Indonesia No. 24 Year 1997 stipulates that:

- (1) In the implementation course of registration of land as referred in Article 5, the task of registration of land shall be carried out by the Head of Land Office, except for certain activities which by this Government Regulation or the relevant legislation is assigned to other Officials.
- (2) In carrying out the registration of land, the Head of Land Office shall be assisted by PPAT and other Officials assigned to carry out certain activities pursuant to Government Regulation and the relevant legislation.

NLA as a government agency that is conducting registration of land throughout the territory of the Republic of Indonesia, there are other officials assisting the Head of Land Office Regency/ City to carry out certain activities in registration of land, namely:<sup>14</sup>

- (a) Land Deed Official (hereinafter LDO) who plays a role in the deed-making of transfer of rights except auction and deed of mortgage rights on land or ownership right on strata title.
- (b) Pledge of Endowment Deed Official (hereinafter PEDO) plays a role in deed-making of pledge of endowment land.
- (c) Official from Auction Office, who plays a role in the production of official record of land rights or Ownership Right on Strata Title.

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<sup>12</sup> A.P. Parlindungan. *Op. Cit.*, p. 80-81.

<sup>13</sup> <http://setkab.go.id/perpres-no-no-1652014-tentang-kementerian-kementerian-yang-berubah/>, by: Public Relation Cabinet Secretariat Republic of Indonesia, accessed on Tuesday 4<sup>th</sup> April 2017.

<sup>14</sup> Urip Santoso. *Op. Cit.*, p. 315-316.

- (d) Adjudication committees that play a role in registration of land systematically. All registration of land systematically from the beginning of the activity until the signing of land title certificate is carried out by the Adjudication Committee.

In Article 6 paragraph (2) GR of the Republic of Indonesia No. 24 Year 1997, there is a word 'assisted' which does not mean that LDO is a subordinate of the Land Office Regency/ City, but LDO has independence in the Regency/ City. While the official who signed the certificate is<sup>15</sup> Chairman of the Adjudication Committee on behalf of the Head of Land Office Regency/ City, if exercising its authority and duties,<sup>16</sup> further explanation on LDO is regulated by GR of the Republic of Indonesia No. 24 Year 2016 State Gazette, Number 120 Year 2016 Additional State Gazette Number 5893 on Amendment on GR of the Republic of Indonesia No. 37 Year 1998 on the Regulation of Land Deed Official.

In Indonesia, the certificate is issued by the Land Office:

- (a) Registration of land is conducted systematically.
- (b) Head of Land Office Regency/ City, if the registration of land is conducted in individual nature sporadically.
- (c) Head of the Measurement and Registration of land Section on behalf of Head of Land Office Regency/City, if the registration of land is conducted sporadically in mass nature.

The term of ownership of land rights in Singapore is divided into 2 (two) namely, freehold estate (unlimited time) and leasehold estate (in time). Registration of land in Singapore adopts a positive publication system that is, the purchaser in good faith and for value obtains the right of the person whose name is registered as the holder of the right in the Register obtains an indefeasible right title also if it is later proven that the listed rights holders are not the true right holders.

In this system, the data contained in the Register has an absolute proof of power.<sup>17</sup> As mentioned in Article 34 in Land Title Act Chapter 157 (hereinafter LTA Chap. 157) of Singapore, among others, "The Registrar shall issue a certificate of title of the land comprised in upon requested of the registered proprietor of that land ...". Then in Article 35 in LTA Chapter 157 of Singapore stipulates "The Registrar may, deliver a certificate of title or any registered instrument and related documents in his custody to the person who lodged the documents...". Further in Article 36 in LTA Chap. 157 Singapore mentions that "Every manual folio ... a print-out of a computer folio issued by the Registrar shall be received in all courts as evidence ... be conclusive evidence that the land therein...is... entitled to the estate or interest in the land therein specified and described".

Upon completion of registration on behalf of the recipient of the right, the actual right holder becomes loss of his right and cannot demand the cancellation of the legal action to the buyer. Under certain circumstances can only claim compensation to the State.<sup>18</sup> In 2001, the Singapore Land Authority (hereinafter SLA) was constituted as a statutory authority with responsibility for land matters in Singapore. Its wide-ranging functions

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<sup>15</sup> Urip Santoso. *Ibid.*, p.42-43.

<sup>16</sup> Urip Santoso. *Ibid.*, p. 316.

<sup>17</sup> Boedi Harsono. *Op.Cit.*, p. 81

<sup>18</sup> Boedi Harsono. *Ibid.*, p. 81.



include responsibility for registration of land, compulsory acquisition and the administration of state land.<sup>19</sup>

The SLA is a one-roof institution appointed by the Ministry of Law in Singapore in land affairs. Through this institution, the Singapore government maximizes the very limited land function to maximize social and economic land activity in Singapore.<sup>20</sup>

Singapore is divided into 64 survey areas called Mukim (MK) for the district areas and Town Subdivision (TS) for urban areas. There are 34 MK and 30 TS in Singapore, and each survey area is divided into smaller sections and called "Lots". Each Lot is given a number by Chief Surveyor. Each registry and recording of data registration is always based on survey results from each region and also the number of each lot of the land, such as example; MK18 Lot 99279M.

Another institution that is appointed by government in supporting registration of land in Singapore is Land Surveyors Board (hereinafter LSB). LSB serves as the administrative institution and land surveyor administrative in Singapore.<sup>21</sup>

In Singapore the registration of land rights held by SLA is set forth in SLA Act Chapter 301 (hereinafter referred to as SLA Chapter 301) conducted by a survey of Chief Surveyors set forth in LTA Chapter 157 and supported by LSB that is regulated by LSA Chap.156. The implementation of registration of land is carried out by the Land Titles Registry sector as regulated in LTA Chap.157.

Registration of land in Singapore has used the Singapore Titles Automated Registration System Lodgment, and will produce a list of land including folios or documents stating that the land is eligible or ineligible to be registered (qualified or unqualified). Secondly it includes files or Dealings registered as referred to in Article 4 Land LTA Chapter 157 that is "Dealing means any instrument other than certificate of the title or *caveat* which is registrable or capable of being made registrable under the provisions of this Act or in respect of which any entry or notification in the land-register is by this Act required or permitted to be made".

The intended instrument is described also in Article 4 in LTA Chapter 157 that is: "Instrument includes a transfer, lease, mortgage, transmission application, charge and any other application, or any other document in writing relating to any disposition, devolution or acquisition of land or any claim to or vesting of interest in land". And the third is the instruments and other documents that have been reported, registered and approved under LTA Chapter 157.

The Registrar will create a folio for each land plot by registering and recording it, including:

- (a) A description of the land and building or if there is interest therein (mentioned in Article 4 in LTA Chapter 157 that "interest", in relation to land, means any interest in land recognized as such by law, and includes an estate in land).
- (b) A description of the proprietor (mentioned in Article 4 in LTA Chap.157) that "proprietor", means any person who appears from the land register to be the person

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<sup>19</sup> <http://www.singaporelaw.sg/sglaw/laws-of-singapore/commercial-law/chapter-29> by: Richard Ming Kirk Tan, Morgan Lewis Stamford LLC, accessed on Thursday 6<sup>th</sup> April 2017.

<sup>20</sup> A result of direct interview with Ms. Jade Koh. *Deputy Director of Singapore Land Authority, Revenue House Singapore*. Singapore: Friday 24<sup>th</sup> June 2016.

<sup>21</sup> A result of direct interview with Mr. Eek Cher Loh. *Assistant Manager of Land Titles Registry, Singapore Land Authority*. Singapore: Friday 24<sup>th</sup> June 2016.

- entitled to an estate or interest in any land which has been brought under the provisions of this Act, and includes a mortgagee, charge and lessee).
- (c) Explanations of the buildings above which affect the land, other information relating to the buildings, including registry/ record under this law or other laws deemed appropriate by the Registrar or appointed Land Registry Officer by the Ministry of Law under Article 5 in LTA Chap.157, including if there is specific notices and references concerning data recording, relating to land, buildings and other matters, shall be notified to the Registrar.
  - (d) Any document registered in the land register shall be recorded and stored in National Archives of Singapore for data maintenance from the Registry.

In Indonesia, the NLA is headed by a Minister of AASP who is responsible to the President and mentioned in Article 1 paragraph (1) of Presidential Decree of the Republic of Indonesia Number 20 Year 2015 on NLA, then in Article 5 states that, "NLA consists of Head held by Minister of Agrarian Affairs and Spatial Planning". Furthermore, Article 10 of Presidential Decree of the Republic of Indonesia Number 20 Year 2015 states that "The Head shall submit report to the President concerning the results of the implementation of government affairs in the land affairs periodically at least once every 3 (three) months or at any time as necessary". While in Singapore the SLA is headed by a Chairman which is mentioned in Article 5 SLA Chapter 301, that "The Authority shall consist ... a Chairman ...", and mentioned in section 21 of SLA Chap. 301, that "... send report of his audit to the Minister ... submit such periodical and special reports to the Minister ....".

While the SLA is stipulated in SLA Chapter 301 is assisted by among others, the SLA (including the Land Dealings [Approval] Unit), the Land Officer, the Survey Department, and the Land Systems Support Unit, which is subsequently divided into 64 survey areas and referred to as MK for the district area, and TS for urban areas. There are 34 MK and 30 TS in Singapore. And each survey area is divided into smaller sections and called "Lots". Each Lot is given a number by Chief Surveyor.

### **Certainty and Legal Protection from Land Registry in State of the Republic of Indonesia and State of the Republic of Singapore**

Conceptually, legal protection of individual rights and society is one of fundamental right for individual and society, and it can be a preventive law protection and repressive law protection.<sup>22</sup>

There are 2 (two) kinds of proof of certificate as a proof of rights, namely:

- (a) Certificate as a strong evidence of rights.
- (b) Certificate as an absolute proof of rights.

The proofing nature of certificate as a proof of rights is contained in Article 32 GR of the Republic of Indonesia No. 27 Year 1997, as follows:<sup>23</sup>

- (1) A certificate is letter of proprietary, which is constituted as strong evidence of the physical data, and juridical data contained therein, along that the physical data and juridical data are consistent with the data contained in the relevant measurement letter and books of land title.

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<sup>22</sup> Arba. (2014). "The Legal Protection of Community Rights In Area Spatial Planning of Mataram City Base on the Local Regulation Number 12 Year 2011." *Jurnal IUS (Kajian Hukum dan Keadilan)*. 2 (1): 39.

<sup>23</sup> Urip Santoso. *Op. Cit.*, p. 272.

- (2) In the case when a plot of land already issued a certificate legally on behalf of a person or legal entity obtaining the land in good faith and in actual control, the other party who feels has right upon the land can no longer claim the exercise of that right if within 5 (five) years of the issuance of the certificate the party does not submit a written objection to the holder of the certificate and the Head of Land Office concerned or does not file a lawsuit to the Court regarding land tenure or issuance of the certificate.

Although it has received recognition from the BAL, the certificate has not guaranteed the legal certainty of its ownership because in its own regulation gives an opportunity where as long as there are other parties who feel has ownership upon the land may sue the party whose name is listed in the certificate to the General Court, or sue the Head of NLA/ Head of Land Office concerned to the Administrative Court of the State, or the technical claim of its issuance administration.<sup>24</sup>

The weakness of Article 32 Paragraph (1) of GR of the Republic of Indonesia No. 24 Year 1997 is that the State does not guarantee the correctness of physical data and juridical data presented and there is no guarantee for the owner of the certificate because at any time there may be a lawsuit from another party who feels aggrieved over the issuance of the certificate.

The importance of certificate role, therefore the strength of proofing is not only applicable externally/ to external parties, but also has internal strength, which is to provide a sense of security for the holders/ owners and their heirs therefore in the future there is no difficulty to manage it.<sup>25</sup>

Based on the provision in Article 32 Paragraph (1) of GR of the Republic of Indonesia No. 24 Year 1997 states that there is no guarantee for the holder of the land right even though the certificate has been issued, because there is no guarantee for the holder of the land right to not receive a claim from another party who feels aggrieved on the certificate issuance. Similarly, NLA does not guarantee the correctness of physical data and juridical data contained in the certificate.

Therefore, to provide legal protection for holder of land right that where the certificate has been issued from lawsuit or objections of other parties, Article 32 Paragraph (2) of GR No. 24 Year 1997 is regulated, that is:

“In the case of a plot of land having been issued a certificate legally on behalf of a person or legal entity obtaining the land in good faith and in actual control, the other party who feels the right to the land can no longer demand the exercise of that right if within 5 (five) years since the issuance of the certificate does not submit a written objection to the holder of the certificate and the Head of the Land Office concerned or does not file a lawsuit to the Court regarding land tenure or the issuance of the certificate (*rechtverwerking*).”

Nevertheless, the provision of Article 32 paragraph (2) of GR of the Republic of Indonesia No. 24 Year 1997 has juridical problems, among others, the loss of a person's land right is not sufficiently regulated in the form of government regulation it should be in the form of law. Then, the person who feels aggrieved over the issuance of a 5-year-old certificate by the Land Office of the Regency/ City, can still sue and resolve the dispute by filing a lawsuit to the State Administrative Court (hereinafter SAC) if it

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<sup>24</sup> Rusmadi Murad. (1997). *Administrasi Pertanahan Pelaksanaannya dalam Praktik*. Bandung: Mandar Maju. p. 46.

<sup>25</sup> Beni Bosu. (1997). *Perkembangan Terbaru Sertifikat (Tanah, Tanggungan, dan Condominium)*. Jakarta: Mediatama Saptakarya. p. 5.



meets the elements as a Decision of State Administration (hereinafter referred to as DSA) as stipulated in Law of the Republic of Indonesia Number 51 Year 2009 on the Second Amendment to Law Number 5 Year 1986 on State Administrative Court (hereinafter ACL).<sup>26</sup>

Currently pursuant to Regulation of the Minister of AASP/ NLA of the Republic of Indonesia Number 7 Year 2016 on Form and Content of Land Rights Certificate (hereinafter MRAASP/ NLA of the Republic of Indonesia No.7 Year 2016) mentioned in Article 1 point 1 that "certificate is a letter of proprietary on land rights, management rights, endowment land, ownership rights of strata title and mortgage rights which have been recorded in the accounting book of the land concerned respectively" subsequently mentioned in Article 4 paragraph (1) of MR AASP/NLA No. 7 Year 2016 "For the interests of right holder or manager of endowment land, is issued Certificate of Land Rights, Ownership Right of Strata Title, Mortgage Rights and Land of Endowment certificate". In Article 4 paragraph (2) MR AASP/ NLA of the Republic of Indonesia No. 7 Year 2016 mentioned "The certificate is printed on 1 (one) sheet based on information obtained from physical data and juridical data". Furthermore, in Article 3 of MRAASP/ NLA of the Republic of Indonesia No.7 Year 2016 stated, "Each certificate for individual is completed with a photo of the rights holder concerned".

The impact of Torrens system usage in Singapore is its publication system is a positive publication system, the State fully guarantees registration and issuance of certificates, and eliminates the existence of counterfeit elements. This is described in Article 36 LTA Chap.157, namely "... be conclusive evidence that the person named as proprietor therein or in any memorial thereon is ....".

In the Torrens system "registration" is absolutely exercised and a prerequisite for the nature of resistance to the lawsuit.<sup>27</sup> The land certificate is the perfect evidence of the right holder (most complete) and cannot be sued. In the event of a claim or lawsuit by the owner of land rights who is actually compensated against the actual owner through the insurance fund. The land title book cannot be changed unless it obtains a land certificate by counterfeit or fraud.<sup>28</sup>

A good land administration system will be able to guarantee the security of usage for its owners, encourage or increase taxation, increase its usage as a credit guarantee, reduce land disputes.<sup>29</sup> Besides, it can also facilitate rural land reform and improve urban planning that will and is being implemented within a State.<sup>30</sup>

The certificate as the absolute evidence of obtaining the indefeasible and priority as mentioned in Article 47 LTA Chapter 157 with some exceptions. Among the rights that are indefeasible title then provide guarantee of right certainty and legal protection for the holder. Hence, with the application of Torrens system in registration of land in Singapore, the certificate result is absolute evidence, which can no longer be sued, annulled by Judge Decision. The party cannot claim the cancellation of legal action of

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<sup>26</sup> Urip Santoso. *Op.Cit.*, p. 283-284.

<sup>27</sup> Adrian Sutedi. *Op. Cit.*, p. 5.

<sup>28</sup> Bachtiar Effendi. (1993). *Pendaftaran Tanah di Indonesia dan Peraturan Pelaksanaannya*. Bandung: Alumni. p. 43.

<sup>29</sup> Adrian Sutedi. *Op.Cit.*, p. 208.

<sup>30</sup> Adrian Sutedi. *Ibid.*, p. 209.

rights transfer to the buyer. This means that the party cannot claim the return of his land, but can only claim compensation to the state by filing a *caveat* to the Land Office.

The concept of *caveat* is the implementation of Torrens system in Singapore regulated in Article 115 to Article 130 LTA Chapter 157, among others in Article 115, stated: "Any person claiming an interest in land (whether or not the land has been brought under the provisions of this Act), or any person otherwise authorized by this Act or any other written law to do so, may lodge with the Registrar a *caveat* in the approved form...."

"According to the Torrens system, *caveat* can be submitted by as follows:

- (1) *Caveator* (actual rights holder);
- (2) Registrar (land registrar officer);
- (3) Last rights holder (buyer).

The *caveat* petition is filed in the prescribed form and mentioned therein the reasons for *caveat* submission, along its evidence and description of which land is the object of *caveat*. If later on it turns out that the *caveat* or is proven to be unfaithful then he is obliged to replace loss to any person who aggravated as a result of the filing of the *caveat*. The burden of proof lies with the aggrieved party in the *caveat*'s filing, which states that the *caveat* is for no apparent reason. However, if later he cannot prove the loss he suffered, then he is not entitled to compensation.

The *caveat* submission is conducted prior to registration, and the Registrar first checks it in the *caveat index*, due to the Registrar can execute the registration of land, if there is a *caveat* therein. As Adrian J. Bradbrook, et.al. stated, as follows: "A *caveat* effectively operates as an injunction to the Registrar by restraining the Registrar from registering any dealing. The Registrar is prevented from registering any dealing prohibited by the *caveat* until the *caveat* or has had an opportunity to establish her on his claim".

Furthermore, N. Khublal explained regarding *caveat*, which is: "A *caveat* is a document which, when lodged in the land registry gives the *caveat* or the person who has lodged it the opportunity of protecting an existing right or of establishing an existing claim. A *caveat* is similar in effect to an injunction, though it is not an order of the court".

Both Indonesia and Singapore stipulate that the certificate is a means of proofing on a right that aims to provide legal certainty to the parties concerned in registration of land. The difference is the legal certainty of the certificate as a means of proofing of registration of land lies in the system of registration of land publication used, which affect on the legal force of the certificate as a strong or absolute evidence.

Unlike Indonesia, which uses positive negative publication system, Singapore uses a positive publication system in its registration of land. In positive publications, the State guarantees the truth of physical data and juridical data in registration of land and certificate as absolute evidence with some exceptions for example, land certificate by counterfeit or fraud. This is described in Article 36 LTA Chap. 157 namely "... be conclusive evidence that the person named as proprietor therein or in any memorial thereon is ...". The registration accuracy is based on the land surveys of the applicants who register the land as set forth in the Boundaries and Survey Maps Act Chapter 25 Year 2015 as mentioned in its consideration, "An Act to provide for the demarcation of land, the establishment and maintenance of boundary marks and the publication of certain survey maps ". And supported by LSB in LSA Chap. 156 Year 2016 as mentioned in its consideration, namely "An Act to establish the Land Surveyors Board, to provide for the registration land surveyors, to regulate the qualifications and practice of land surveyors ...".

In a positive publication system, the purchaser in good faith for value receives indefeasible title and priority as mentioned further in Article 46 paragraph (2) LTA Chap. 157, "Nothing in this section shall be held to prejudice the rights and remedies of any person... to have the registered title of a proprietor defeated on the ground of fraud...to enforce against a proprietor any contract to which that proprietor was a party...".

## CONCLUSION

State of Indonesia adopts civil law system while the State of Singapore adopts the common law system, although there is currently no significant difference between the two legal systems. Registration of land in the State of Indonesia is regulated in BLA under the Customary Law, and GR of the Republic of Indonesia No. 24 Year 1997, while registration of land in the State of Singapore is regulated by the LTA Chapter 157 and SLA Act Chapter 301 based on the English Land Law. The implementer of registration of land in State of Indonesia is NLA, the executor of registration of land in the State of Indonesia is the local Head of the Land Office and assisted by other officials, while the registration of land implementer in the State of Singapore is the SLA and the registration of land executor is Land Titles Registry as well as several other divisions under SLA that support the implementation of registration of land. In the State of Indonesia, the certificate is only strong evidence and may at any time be sued if another party feels aggrieved over the issuance of the certificate (a negative publication system positive tendency). While in the State of Singapore the certificate is absolute evidence (positive publication system). Legal Protection from registration of land in the State of Indonesia is through *rechtverwerking* institution, while in the State of Singapore through the submission of *caveat*.

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