The Role of Modern Registration System on Guarantee of property right in the Iranian legal system

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Abstract

The property right means the correlation between an individual and a property, so that the individual, as owner, may use, transfer, and utilize the property. property right has been traditionally recognized as a definitive right but its recognition cannot guarantee maintenance of the right and prevention from any conflict and damage to this right. In this regard, in order to guarantee the property right and promote social security, Registration System is introduced and due to more complication in social communications, it has changed as well. This study is going to review the role of new registration system in property right guarantee. The results show that electronic registration of the documents and deeds and also implementation of Cadastre plan, as one of the most important characteristics of modern registration system caused guarantee and stability of property right through access to accurate and timely information, hardening of forging of the documents and making mistake in them, reducing claims and disputes concerning the violation of property right and reducing the cost of registration.

Keywords: Modern Registration, Property right, Official Documents, Electronic Registration, Cadastre.
Introduction
The old registration system had some shortcomings including personalization actions, paper works, and the lack of accurate consolidation of ownership - the delay in issuing title deed - delays in the judicial inquiry response that was leading to prolongation of procedure and this had increased the complaints in judicial authorities. The result was a huge number of property lawsuits and after some modifications, State Organization for Registry of Deeds and Properties tried to propose and implement a modern registration system to increase social security and decrease the amount of lawsuits caused by title deeds. The most important action in this process was implementation of Cadastre plan and instant registration of transactions. The Registration institution is one of the important organizations due to its role in insuring economical, legal and judicial security and health, and as the result, maintaining social security in different communities. Based on this study, it shall be noted that in our country this important branch of law and economy is neglected in the educational and practical systems and pathology of the causes of this negligence to registration law needs a wider study that is out of scope of this paper.

At first, we are going to define modern registration system and determine its differences from traditional system and then the main question of this research is to investigate the effect of modern registration on assuring and guaranteeing the property right.

2- The Concept of Registration system and its Types
Supporting owners and the third parties make registration of real rights essential. Registration means creation and implementation of a method so that the beneficiaries can use it and they get familiar with their own rights and are supported by its performance bonds. Registration of real rights means that the rights are registered in offices so that the public may have access to them (Razani 1997: 101). Since property right is one of the most obvious rights, human was always seeking methods and systems to guarantee maintenance and implementation of the mentioned right as much as possible; particularly, when the mentioned right is related to properties. Using a proper system for registration of properties is a great help to society and it secures legal rights of owners and customers, especially when the land sales market is booming.

The property registration systems are important infrastructures that perform the basics, objectives, and policies of title registration in developed and developing countries. The systems are related to social, legal, economical and technical frameworks and support the financial markets of properties and at the same time, they are related to management and development of natural resources. Thus, the mentioned systems shall be simple, reliable, fast and affordable in terms of finance and they also shall be based on needs of the society in which the registration is accomplished. In summary, it can be said that the process is based on registration principals that is supported by legalization and social organizations and it shall have financial and labor resources for their implementation and maintenance.

Any system should be viewed as a set of components (a whole). In fact, the characteristics of all systems are that they shall be reviewed by emphasizing on the relation between their elements and general objectives that are followed by the whole. By emphasizing on the objective of studying the property registration, the registration system can be defined as follows: “a collection of attached elements that its specifications are correlated with each other and with environment
so that it makes a whole and their objective is to reach to a determined target” (Zevenbergen, 2002:87). The “whole” is the most important word in this definition, because “the system as a whole” is more than a collection of components. In fact, a group of elements has some specifications that are only meaningful when they are considered as a whole not as a collection of components, although they are made of activities of components and their structure.

Generally, two major divisions (according to different principles) of the registration system have been introduced i.e.: 1. static and dynamic registration system 2. Personal registration systems including: system of registration for transactional and contract documents, and real system of registration of property (system of the registration of property ownership) . The static registration system is focused on description of information that is recorded and at the same time, it considers the objectives of registration in receiving information and initial IDs. The dynamic registration system of land is based on description and division of the main functions, collecting initial facts and considering the next changes of information (through transfer and division of lands) (Tabatabayi Hesari, 2010: 221).

The other categories for registration systems are “personal system of registration or registration of transactional and contract documents”, and “real system of registration or registration of property title”. The difference between these 2 concepts is the difference between amount of government’s interference and cultural – legal development of countries. The key difference between 2 systems is the question that whether the only things that are registered are the transactions on properties, legal actions and documents (personal or document registration system) or the property right (rights) is registered and protected (real registration or property right registration system). In personal registration system the focus is on registration of owner and holder of rights and it shows that “who is owner of what”. On the other hand, in real registration system the focus is on registration of title; it means that “what is under ownership of whom”. In fact, the difference between the systems is in the quality of registration information. It means that in personal system, the registered information is the information of owner and the holder of right but in real registration system the basis for registration is the information of ownership and not the owner and its holder. (Enemark, 2005: 5- 6).

2- Registration System in Iran
Investigation of registration principals in Iran, both the ones prior enact of Registration Law in 1931 and after that, shows that in the law of Iran the basis for registration of ownership was always the title of land not the property of its owner. In fact in Iran the information that has always been focused on was the information of title and registration system was always asking question that “what is owned by whom?” On the other word, for land registration in Iran the official registration process registers the rights of land through property law of owner. This is an objective registration system in which the property is immovable and it is the main subject of registration. Therefore in the legal system of Iran since the modern registration system has been started, the objective registration was the base of registration that was inspired by the laws of European governments such as Germany and Switzerland (Tabatabayi Hesari: 148: 2014).

After some time, and due to unofficial transactions, the data recorded in the registration office could not show the real status of a property and its real owner. Thus, it was required to update the data in time of initial registration of property based on the current changes; otherwise the information will be expired after a short time. This causes that despite legislator stated that
registration of deeds was optional at the beginning, he made registration of all of the rights and contracts and transactions for the property obligatory in property offices and it was mentioned that failure to registration would waive any right of claim in the offices and courts (idem: 233). In this way the registration system in Iranian Law became dynamic and the information was updated to save them from expiration. So as it can be seen, in dividing the registration systems to objective and personal systems, the real estate registration system in Iran always follows an objective system and in dividing the system to categories of static and dynamic, the registration system of Iran is moving toward dynamic system (idem: 234).

3- Concept of Modern Registration System
By start of IT era, the notary public offices were equipped with modern service tools. And specifically due to globalization approach and the tendency to enter the international markets and performing transactions in the internet and online basis, it is an undeniable need (Tajgar 11: 2012). Traditional and modern registration systems are defined as registration on paper (traditional) and electronically (online) registration (modern) (Karimiayi 19: 2014) but it shall be mentioned that traditional registration of the documents does not mean using paper and pen for registration, in modern registration the same principals and rules that were used in registration for many years are utilized but the only difference is the duration of process that based on the requirements is changed and modified. Therefore, the idea of modern registration means using some principals and rules for registration that is done in form of modern communication systems (ElSan 128: 2006). Although, analyzing the articles of e-commerce law, registration of deeds and real estate’s law of electronic- service offices and the regulation of e-services and also due to the results of legal investigation of the e-registration indicates that registration based on modern information and communication technologies – on the other word e-registration- does not mean elimination of traditional registration (Asadi 55-56: 2012).

Obviously, using the electronic system and IT is the main difference between traditional and modern registration systems (Habibi and Hanifi 49: 2012) and it can be said that in comparison of modern registration systems with traditional ones , the traditional system needs a specific procedure that is determined based on law by observing the rules and regulations required for authentication, signature certificate, notarizing documents and assigning it to a specific person or persons; but modern registration, in addition to all of the mentioned steps, has no difference with the traditional system. In fact the only change is in type of registration and the existence of modern method that are used like electronic signature or document in online basis (ElSan 123: 2006)

4- Effects of the New Registration System
Considering the variation in the range of modern registration system, in this part in order to review some of the effects of modern registration, we looked at 2 methods, including electronic registration and Cadastre methods. Electronic registration is performed by communication tools to register the documents. In this method the notary public office will check the identity, originality, authenticity and consent of applicant(s) of registration or certification of signature through online networks and then, he/she takes action for issuing documents or certifying the same and signing the deeds (Idem: 138).
Cadastre is also one of the most important effects of modern registration system. It includes all of technical, engineering, audit, registration and legal affairs of the property that are done during its registration whether it is registered in the notary public or not. In order to determine the limits and location of the properties and show their geographical relations together, and also in order to register the title and facilitate arbitration of property disputes and registration of properties and other causes related to them, this system is used (Faramarzpour, 28: 2010).

5- Using Modern Registration System for reduction of Property Related Disputes and Guarantee the Property right

5-1 Guarantee of Property right through Confirming Property right

In order to insure reliability of registration system, and also to perform its role in stabilization of ownership and maintaining the rights of people, it shall be reliable on access to the accurate information and also it has to be stable in proof strength. Considering the fact that information is registered and archived through computers and using IT in modern registration systems, the information that is necessary for registration of ownership can be accessed through a unify and comprehensive system quickly and easily and ownership will be registered (Habibi and Hanifi 50-51: 2012).

5-2 Insuring Property right through Fighting Forgery and Mistakes

Considering the fact that the reason for registration regulations, consolidation of ownership is to prevent from conflicts between individuals and the strengthening of economic and social security, any shortage in the administrative system of registration that leads to mistake or forgery is destroying the main objective of this system. By the advancements in the modern technologies, the fact is clear more than ever that performing registration affairs through traditional and manual methods will enhance undesirable errors and on the other hand, it will give the criminals enough opportunity to forge documents. The possibility of making mistakes in registration affairs is so high that the current laws and registration circulars accepted the existence of registration errors and they finally predicted some regulations that are time taking and damaging and make a lot of problems (Heidarnai Fathabadi: 105: 2006). Although digital registration and using modern technologies in this regard can be vulnerable against hackers, the modern registration is not weak against forgery in comparison with the traditional method, because forgery is much easier in the traditional system and in a lot of cases; it does not even need so much specialty while in modern method, we can use the updated methods and proper trainings to stop hackers.

5-3 Guarantee Property right Through Access to Accurate and Timely Information

In modern registration system, due to advanced technical and computer technologies and also due to design of 3D and 4D plans, all of the geometric and descriptive information are always updated and all of the natural and legal changes are recorded in the archive in the shortest time. The registration system provides accurate and on- time information about registered properties as much as possible and the parties of contract can be aware of the real status of the registered property and its legal owner so it can eliminate a lot of conflicts (Habibi and Hanifi 50-51: 2012).
5-4 Guarantee Property right through reduction of Claims and Conflicts Regarding Registration Rights

Using the most advanced informatics methods and modern tools for surveying and modernization of ownership affairs will reduce conflicts, disputes, assaults and property problems. Firstly, the parties of contract can have access to the records of transactions and this option can prevent from so many conflicts. Secondly, accuracy in conclusion of title deeds in the official transactions in time of conflicts and determining the party whose claim is correct can be so helpful for the courts. In addition, considering the fact that the parties can reach to such information prior any conflicts, the false claims are made less. Therefore the judicial authorities are not forced to deal with a lot of false accusations and their time can be saved (Bahrami 195: 2012).

5-5 Guarantee property right through reduction of Registration Costs

One of the most important factors in having successful registration system is reduction of registration costs. The problematic regulations in traditional registration, including providing transcripts, issuing notices, receiving funds in the Notary Public Offices, sending summary of transaction and so on will slow the procedures in state and in addition, it will have a lot of unnecessary costs (macro scale) for people and state and it will make the process of registration very hard for people and the personnel of related offices. In practice, it causes some problems including bypassing regulations and creation of administrative unhealthy relationships. Modern registration system eliminates the costly process and paper works (due to need for inquiries) and need for consuming a lot of time, therefore it will help to reduce a lot of individuals and state costs of registration (Heydarnia Fathabadi: 82, 2006)

Conclusion

The study is about the discussions for modern registration system and its effect on guarantee the title and property right.

The issues of e-government and e-services, financial transactions, information transactions, e-commerce and set up and use of electronic documents have been proposed in the laws and regulations of country for years. The objective of this proposal is to facilitate and expedite the process and increase the quality and quantity of services and improve them and also to reduce the costs of provided services for people. Up to now, a lot of countries were successful to establish electronic government in whole or at least in a part of the country and they have performed exchanging of information, providing services and transaction of goods, concluding title deeds and related documents and also exchanging of money in electronically basis. Considering function of modern registration system in guarantee of property laws due to its ability to have fast access to accurate and timely information, collecting and archiving information in a uniform and coordinated method, also fast and facilitated access to ownership registration and ownership information including registration information and also the location of the land through modern registration technologies, it can be said that the modern registration system is a guarantee for maintaining and assuring property right.

In order to improve the function of electronic government and realize the objectives and tools of modern registration system, some factors such as more supervision from law enforcement authorities for implementation of this system in a more regulated and optimized method of
modern registration system in Iran, training the notary publics and their personnel about the principals of digital and electronic registration and computer operation and also the IT and also training the specialized staffs for notary public offices and other governmental offices about the methods and functions of modern registration system and also taking necessary actions for making infrastructures required for modern registration system including facilitated access to high speed internet and intranet are some of suggestions that can be made.
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