

MULTIPLE LAND RIGHTS OWNERSHIP CERTIFICATES: A LEGAL GUARANTEE QUESTION

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ABSTRACT

The land is a very complex object that is easy to cause disputes, these disputes can occur between individuals, individuals with legal entities, or between legal entities. As an implementation of the provisions of the 1945 Constitution Article 33 paragraph (3) above, Law Number 5 of 1960 concerning Agrarian Principles ("UUPA") was promulgated. The holding of land registration will have legal consequences, namely the issuance of a letter of proof of land rights commonly referred to as a land certificate to the holder of the land rights concerned which serves as strong evidence. However, in practice, the ownership of land certificates is often doubled, resulting in disputes and legal uncertainty regarding the ownership of land rights. In this study, the author uses a normative method with a legal approach. The results of this study indicate that multiple certificates can occur due to various factors. Errors from the land owner himself, Errors from the land owner himself, the local government, or the village that has invalid data, and for the area concerned there is no land registration map and related protections. with overlapping certificates, testing the validity of land rights certificates by the TUN Court.

Keywords: Land Rights, Dual Certificates, Legal Certainty

INTRODUCTION

The State of the Republic of Indonesia, whose composition of people's lives, including its economy, is mainly still an agrarian pattern, earth, water, and space, as a gift from God Almighty, has a very important function to build a just and prosperous society.¹ And constitutionally, the 1945 Constitution in Article 33 paragraph (3) states that "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people."

The land is a very complex object that is easy to cause disputes, these disputes can occur between individuals, individuals with legal entities, or between legal entities. This is due to the increasing population, where with the increase in population, the need for land also increases, but the need for land that continues to increase is not followed by an increase in the amount of land in the territory of Indonesia. (Wantijk Saleh: 1987).

As an implementation of the provisions of the 1945 Constitution Article 33 paragraph (3) above, Law Number 5 of 1960 concerning Agrarian Principles ("UUPA") was promulgated. In the explanation of the agrarian principles, it is said that the agrarian law must provide the possibility for the achievement of functions relating to earth, water, and space and must also be in the interests of the community in addition, the agrarian principles must also fulfill the provisions of the 1945 Constitution Article 33 paragraph (3). (General Explanation Law) In essence, the purpose of establishing the agrarian principles is as follows: (Lulu Fitriani:2021)

1. As the basis for the formation and preparation of the National agrarian law, to prosper and provide justice for the State and the people.
2. As a basis for establishing unity and simplifying land law.
3. As a basis for providing legal certainty regarding land rights for the people.

The land is one of the basic needs in human production activities, both as a place and as a factor of production. The importance of land for human life is therefore not surprising that every human being wants to own and control it. The land is a resource that is indispensable at this time, this is due to the explosion of the population of human growth which of course requires land for a primary place to live. With the importance of human needs for land, it is necessary to have a land certificate as a strong legal basis to avoid land use which often leads to the realm of dispute cases such as land acquisition, eviction, land rights status, etc. that require serious attention to these legal cases.

The National Land Law whose main provisions are contained in the Basic Agrarian Law Number 5 of 1960 is the legal basis and basis for owning and controlling land by other people and legal entities to fulfill their needs, for business or development. Therefore, the existence of individual land rights is always based on the Indonesian Nation's Right to Land Article 1 paragraph (1) of the Basic Agrarian Law, and each land tenure right in the National Land Law includes the Indonesian people's right to land rights. Article 1 paragraph (1), and the right to control the State Article 2 paragraph (1) and (2) of the Basic Agrarian Law, as well as individual rights to land consisting of land rights (primary and secondary) and land security. (Darwis Anatami:2017) Together with the enactment of the agrarian principles, land registration was implemented so that people could get rights to a plot of land. The land rights mentioned in the Agrarian Principles are as follows:

1. Property rights;
2. Cultivation Rights;
3. Building use rights;

4. Right to use;
5. Lease rights;
6. The right to clear land;
7. The right to collect forest products; and
8. Other rights that are not included in the rights mentioned above will be stipulated by law as well as rights of a temporary nature as mentioned in Article 53.

Regarding the land rights mentioned above, the law requires land rights holders to register their land. Land registration is an important matter where registration of land rights is the initial process of the birth of proof of ownership of land rights. (Supriadi:2008) Land registration is regulated in Article 19 paragraph (1) of the Agrarian principles which state that as an effort to ensure legal certainty, the Government shall conduct land registration throughout the territory of the Republic of Indonesia with the provisions stipulated in Government Regulations. Land certificates are never mentioned in the Agrarian principles, but in Article 19 paragraph (2) letter c, a certificate of proof of title is mentioned. The proof of title is often interpreted by the community as a land certificate (Muhammad Yamin Lubis, et al:2008)

The holding of land registration will have legal consequences, namely the issuance of a letter of proof of land rights commonly referred to as a land certificate to the holder of the land rights concerned which serves as strong evidence. A certificate is a letter of proof of rights that applies as a strong means of proof regarding the physical data and juridical data contained in it, as long as the physical data and juridical data are by the data contained in the letter of measurement and the book of land rights in question. One of the rights to land that is given to someone as a result of the registration of the land is the right of ownership. Property rights are hereditary things, the strongest and most complete, that a person can have on his land. These property rights can be transferred and transferred to other parties, and may only be owned by Indonesian citizens (WNI). Meanwhile, Foreign Citizens (WNA) are only entitled to obtain property rights due to inheritance without a will or mixing of assets due to marriage. (Kian Gunawan:2008) Although the main function of the certificate of land rights is as evidence, the certificate is not the only evidence of land rights, it is still possible to prove a person's land rights with other evidence. Certificates as evidence are very important, for example in terms of transfer of rights, and legal acts of transfer of rights aim to transfer land rights to other parties (who meet the requirements as rights holders), in the form of buying and selling land, exchanging, grants or will grants. and others. However, in reality, in society there are often various problems related to certificates, one example of problems related to these certificates is the frequent occurrence of multiple certificates and/or overlapping areas in the two certificates of property rights.

RESEARCH METHOD

The approach method used in this research is to use a normative approach using a statute approach and a conceptual approach. The type of research in this research is descriptive-analytical. Sources of legal materials in this study are sourced from secondary data based on library materials. In this study, the authors use library materials that provide instructions and explanations of the subject matter in this study, such as the Civil Code, Laws related to the subject matter, agreement law books, research results, work of scientific scholars, and the opinions of legal experts.

RESULT AND DISCUSSION

One of the principles of the rule of law is the guarantee of legal certainty and legal protection where the rights of citizens must be protected and guaranteed by the State. In connection with this, the 1945 Constitution stipulates that the State as an organization or the highest body authorized to regulate all matters relating to the interests and welfare of the wider community controls the earth, water, and natural resources contained therein and uses them for the greatest prosperity of the people. Since ancient times, land has been a source of dispute for humans because of its limited number, causing a struggle for land rights that triggers a prolonged land dispute, even land owners are willing to sacrifice anything to defend their land. Mochammad Tahud stated as follows: "Agrarian issues (land matters) are a matter of human life and livelihood because the land is the origin and source of food for humans. The seizure of land means the struggle for food, the pillar of human life. For that people are willing to shed blood and sacrifice everything they want. exist for the sake of sustaining the next life" (Mochammad Tauhid, 2009:3).

One of the objectives of land registration as stipulated in Article 3 of Government Regulation No. 24 of 1997 concerning Land Registration is to provide legal certainty and legal protection to holders of rights to a parcel of land, apartment units, and other registered rights so that they can be easily accessed. prove himself as the holder of the right in question. To provide legal certainty and legal protection, the holder of the right in question is given a certificate of land rights. Although it has received recognition in the Agrarian principles, the certificate does not guarantee legal certainty for the owner because the regulations themselves provide an opportunity where as long as other parties feel they own the land, they can sue the party whose name is civilly listed in the certificate to the General Court, or sue the Head of the National Land Agency/Head of the Land Office. concerned to the State Administrative Court, or a lawsuit concerning the technical administration of the issuance (Rusmadi Murad:1997).

Certificate as proof of absolute rights if it meets the cumulative elements, namely: (Santoso Urip:2021)

1. The certificate is legally issued in the name of a person or legal entity
2. Land acquired in good faith
3. The land is controlled for real
4. Within 5 (five) years since the issuance of the certificate, no one has submitted a written objection to the certificate holder and the Head of the local Regency/Municipal Land Office or has not filed a lawsuit with the court regarding land tenure or the issuer of the certificate.

Ownership of land rights by a person by a person or legal entity must be proven. Proof of ownership of land rights is carried out or shown by various kinds of evidence. However, the strongest evidence is through land certificates which are the strongest evidence for ownership of land rights as stated in Article 19 paragraph (2) letter c of the UUPA, namely certificates as strong evidence, namely physical data and juridical data contained in the certificate are considered true as long as it cannot be proven otherwise by other evidence which can be in the form of a certificate or other than a certificate. To obtain a land certificate, it is certain that the land must be registered with the Land Office. In terms of proof, it can be seen in Article 23 of Government Regulation Number 24 of 1997 which regulates proof of ownership of land rights stating that to obtain the truth of juridical data for new rights and to register rights, the proof is done by: (Hartanto Andy:2009)

1. Determination of the granting of rights from the official authorized to grant the relevant rights according to the applicable provisions if the granting of such rights originates from state land or land with management rights. The determination of the authorized official regarding the granting of state land rights can be issued individually, collectively, or in general.
2. The original deed of PPAT which contains the granting of the right by the holder of the Property Rights to the recipient of the right concerned regarding the Right to Build or the Right to Use on the Land with the Right of Ownership. The granting of Building Use Rights or Land Use Rights on Ownership Rights in addition to being regulated in Government Regulation Number 40 of 1996, is also regulated in Regulation of the State Minister of Agrarian Affairs/Head of BPN Number 9 of 1999.

Land registration is carried out throughout the territory of the Republic of Indonesia according to the provisions regulated by Government Regulations to ensure legal certainty. The land registration includes:

1. Measurement of land mapping and bookkeeping;
2. Registration of land rights and the transfer of such rights;
3. Provision of letters of proof of rights, which serve as a strong means of proof.

Land registration needs to be carried out to provide legal certainty to people who control and own land so that later they have the power of rights before the law and the state. So for example someone owns the land but no certificate automatically cannot be recognized and can only say that the land is his land maybe other people will admit it too because that is the importance of registering land and issuing certificates on the land owned so that someone has a basis for ownership of rights. over the ground. The certificate as proof of a person's land rights which contains physical data and juridical data that has been registered in the land book is a guide to the owner for written evidence of his rights. Therefore, in the issuance of land rights certificates, each land title certificate is issued for one plot of land. However, in fact, until now there are still cases of multiple certificates where one plot of land has more than one certificate. In Dual Certificates, what needs to be considered is the case, because it can be caused by various things, so it can be concluded that most of the causes for the emergence of Dual Certificates are:

1. The fault of the land owner himself who did not pay attention to his land and did not use it properly so it was taken over by someone else and then used because he felt that the land had no owner or no owner. Because he felt that he had controlled the land for a long time, the person then claimed that the land was his and issued a certificate on the land without knowing that there was already a certificate on the land, or During measurements or field research, the applicant intentionally or unintentionally indicated the location of the land. wrong land and land boundaries, as well as the intentional existence of land owners to re-register existing certificates by exploiting the weaknesses of the National Land Agency because they feel that making new certificates is easier and cheaper than transferring land rights.
2. Furthermore, from the National Land Agency because there is no database on land parcels, both registered and unregistered. Lands registered with the Land Office should be recorded and written off on registration maps so that if the land is registered again, it can be seen whether the land has been certified or not. So, the existing data is not yet systematic, although now there have been improvements, there are still many old certificates that are not imparted so it is possible to create multiple certificates because the land agency only needs to accept applications. Or because of the carelessness of the Land Office Officials in issuing land certificates, besides there are still people who act for personal gain so they act defiantly in the sense of not carrying out their duties and responsibilities.
3. Then the factor of the local government, kelurahan, or village that does not have data on land that has been certified and already has control or data that is not valid. If there are people who ask to make a land tenure certificate which is then issued, it continues suddenly because someone with bad intentions comes claiming to own the land and wants to make a land tenure certificate. The local government makes it and sometimes they don't take measurements, don't check the location whether the land is the land or the land has not been registered in someone else's name. Or For the area concerned, the land registration map is not yet available so it is easier for someone who has bad intentions to duplicate his certificate. Furthermore, there is a letter of evidence or complaint of rights which is proven to contain untruth, falsehood or is no longer valid.

Based on the factors mentioned above, it can be seen that there are 4 forms of dual certificates as follows: (Iwan Permadi, 2016:460)

1. Both or more certificates are genuine or one of them is genuine but fake. This means that both have copies in the Land Office's archives. This can happen because a land parcel that has been certified is re-registered at the Land Office. In this case, both certificates are original certificates issued by BPN but the objects are the same object, both in terms of location, position, and extent.
2. Both certificates are fake, and the two duplicate certificates on the land parcel have not been kept a copy at the Land Office.
3. One or more of the certificates is part of another certificate. This is because the plot of land should have been registered through a split, separation, or amalgamation procedure.
4. Overlapping or overlapping means that there are two or more certificates that overlap with each other so the overlapping part is a double certificate because some of the lands should be included in another land certificate.

In the event of maladministration in the land sector which results in the existence of dual certificates of land rights, in general, the party who is harmed is the wider community because of the risk of disputes over the land to which the rights are to be obtained. Holders of land rights with dual certificates who obtain land rights in good faith and with appropriate procedures will certainly feel disadvantaged both materially and immaterially. To provide legal certainty and legal protection to owners of land rights, regulations are made that protect the interests of rights owners who obtain land rights in good faith and accordance with the provisions in the event of a dispute related to multiple land certificates.

Articles 3 and 4 of PP 24/1997 state that the purpose of holding land registration is to provide legal certainty and legal protection to the holder of the right to a parcel of land, where the holder of the right can easily prove himself as the owner of the right to a parcel of land. This proof is done by recording the documents showing ownership of land rights, in which the physical data and juridical data are also included in the document. In this case, it can be proven whom the owner of the right to land is based on the data recorded at the time of land registration. In the event of a double certificate, if one of the parties holding the certificate falsifies the data on the certificate, it can be known by looking at the archives owned by BPN.

In addition, Article 32 paragraph (2) of PP 24/1997 states that parties who feel they have land rights are no longer entitled to demand the implementation of these rights if within 5 years from the issuance of the certificate they do not file an objection. This provides certainty to the rights holder that after a period of 5 years the rights to the land are owned, then no other party can take legal action to obtain the rights to the land by force from the holder of the land rights. According to Maria S.W. Soemardjono, it is fair that after 5 years have passed without a lawsuit, the certificate holder who controls the land in good faith cannot be sued again, and vice versa, the holder of legal land rights is given 5 years to be able to sue another party who controls the land in good faith, and register it. Without a time limit, every buyer who already has a certificate can be sued by another party. With this time limit, indirectly every holder of legal land rights is encouraged to control his land, use it according to the purpose and nature of his rights, and seek proof of it (Maria S.W, 2001:121).

Circular Letter of the Supreme Court Number 3 of 2018 section 5 concerning the Legal Formulation of the State Administrative Chamber provides protection related to overlapping certificates. In point E number 1 it is stated that in the testing of the validity of the certificate of land rights by the TUN Court if there are overlapping certificates, the judge can cancel the certificates issued later, with the following conditions:

1. The holder of the certificate that was issued first controls the physical land in good faith; or
2. The history of rights and tenure is clear and unbroken; or
3. The procedure for issuing certificates is to the laws and regulations.

The above provisions protect land rights holders who get their rights first as long as other provisions are fulfilled by canceling dual certificates related to land rights that arise in the future in connection with a plot of land.

CONCLUSION

BPN is the only authorized institution in the national land. BPN has functions from the registration of land rights to the supervision of land rights. Because of this, if there is a double certificate caused by maladministration, then BPN is responsible for this. BPN will be held accountable both criminally and civilly, either individually or institutionally, for injuries that arise in the community or on individuals. The state provides legal protection to owners of land rights by making laws and regulations that guarantee legal certainty for owners of land rights. By holding land registration, efforts to protect land rights owners begin. Legal protection for holders of land rights is not only limited to land registration but also to the existence of other regulations that stipulate that there can be no lawsuits against the land that has been held for more than 5 years. This gives the right holder the right in good faith to file a lawsuit to protect his interest in his rights to a plot of land, and after 5 years, a title holder cannot be sued concerning the land he owns the right to, which provides legal protection. for landowners.

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