

NATIONAL LAND AGENCY'S RESPONSIBILITIES IN THE ISSUANCE OF OVERLAPPING CERTIFICATES

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ABSTRACT

There are still many issues with land title certificates in Indonesia. One of the issues that frequently arises is dual certificates. In general, the problem of dual certificates arises, and it is known that the issuance of dual certificates is when a plot of land that has been issued a certificate, it turns out that the location of the land overlaps and when the certificate holder concerned will take legal action on a plot of land that has been certified on behalf of another person. In this case, the National Land Agency is a Non-Departmental Government Institution located under and is directly responsible to the President in charge of the Implementation of Land Registration to ensure legal certainty. One of the tasks of the National Land Agency is to be responsible if there are defects in the land registration administration system, including the problem of dual certificates. Thus, in carrying out its duties, the National Land Agency must apply the precautionary and careful principle to prevent violations of the General Principles of Good Governance, hereinafter abbreviated as AUPB. This legal research employed normative legal research and relevant approaches to the research problem, i.e., the case and statutory approaches. Furthermore, this research used primary, secondary, and tertiary legal materials as research data. The research results revealed that considering the issuance of dual or dual certificates by the Land Office, the National Land Agency did not implement the general principles of good governance, especially the principles of accuracy, the principle of legal certainty, and the principle of accountability in carrying out its duties. In Article 12, paragraphs (1) and (2) of Government Regulation Number 24 of 1997 concerning Land Registration, the National Land Agency, before granting a right to land, is obliged to act carefully and scrupulously on the data submitted by the certificate applicant whether regarding physical data and juridical data. In addition, after the certificate requested by the applicant is issued, the National Land Agency must maintain land registration data against transfers, encumbrances, and changes in other land registration data.

Keywords: National Land Agency, Dual certificate, General Principles of Good Governance.

INTRODUCTION

Land has a close relationship with humans because the land has a high value in all fields, including economics, sociology, anthropology, psychology, and politics, to the military. Thus, it creates a problem, namely the attraction of various parties fighting over land, because the function of land is vital for everyone who is faced with limitations on the availability of the land itself (Mutia, Cut Lina Hukum, et al., 2004).

To reduce land disputes between citizens, the law requires right-holders to register their land as mandated in Article 19 paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Law, hereinafter referred to as UUPA, which states that "To ensure legal certainty by the Government, land registration is carried out throughout the territory of the Republic of Indonesia according to the provisions stipulated by Government Regulations". Land registration and issuing certificates of land rights, hopefully, can provide a better and stronger guarantee of legal certainty to land rights owners. As stated in Article 3 Letter 'a' of the 1997 Government Regulation concerning Land Registration, it is explained that "To provide legal certainty and legal protection to the holders of rights to a plot of land, apartment units, and other registered rights; thus, they can easily prove themselves as holders of the relevant rights".

Many issues about land title certificates in Indonesia still occur. They are due to several factors, such as registrations that are not in order, lack of mapping, and the incompetence of registration officers. One problem that often arises is dual certificates. A dual certificate is a plot of land with more than one certificate that overlaps in whole or in part. In general, the problem of dual certificates arises, and it is known that dual certificates are issued when a plot of land has been issued a certificate. It turns out that the location of the land overlaps, and when the certificate holder concerned will take legal action on a plot of land that has been certified on behalf of another person. Presidential Decree Number 26 of 1988 concerning the National Land Agency, hereinafter abbreviated as BPN, is a Non-Departmental Government Institution that is directly under and directly responsible to the President in charge of implementing Land Registration in the framework of ensuring legal certainty. One of the tasks of the National Land Agency is to be responsible if there are defects in the land registration administration system, including the problem of dual certificates. Thus, in carrying out its duties, the National Land Agency must apply the precautionary and careful principle so as not to cause violations of the General Principles of Good Governance, hereinafter abbreviated as AUPB (Aqila, 2018).

The term General Principles of Good Governance, according to Bachsan Mustafa, is intended as a "legal principle", i.e., a principle that forms the basis of the rule of law. The legal principle is the principle that forms the basis for the formation of legal rules, including the rules of governance law. The word "general" means something comprehensive and includes things fundamental and accepted as principles by society in general. Then, the word "government" is referred to as a State Administrative Agency or Officer, which is regulated in Article 1 point 8 of Law Number 51 of 2009 on the Second Amendment to Law Number 5 of 1986 concerning the State Administrative Court, which mentions that "Bodies or Officials State Administration is an agency or official who carries out government affairs based on applicable laws and regulations. Meanwhile, the word "Good" implies that the generally accepted principles are based on things that are good or appropriate to be used as guidelines in administering government for the conditions for forming a clean and good government (Aqila, 2018).

Based on the explanation above, the researcher was interested in discussing the problem of how the National Land Agency's responsibilities were in issuing overlapping certificates or dual certificates.

METHOD

This legal research employed the normative legal research design. Normative research is a scientific procedure to find the truth based on the scientific logic of law from its normative side (Johny Ibrahim, 2006). Normative research must use a statutory approach because various legal rules will be examined as the focus and central theme of research. This legal research was descriptive, which later provided a factual figure regarding a condition involving the implementation of the precautionary principle and the responsibility of the Land Office in issuing overlapping certificates or dual certificates. The research approaches consisted of the case approach and the statutory approach. A case approach is taken by examining cases related to the issues at hand that have become court decisions and have permanent legal force (Peter Mahmud Marzuki, 2017). Meanwhile, the statutory approach examines all laws and regulations related to the studied legal issues and then relates them to the research issues (Marzuki, 2005). Research in this legal writing employs primary legal materials, secondary legal materials, and non-legal materials. Primary legal materials consisted of statutory regulations, official records or treatises on making statutory regulations, and judges' decisions, while secondary legal materials were in the form of all publications that were not official documents. The publications related to the law include books, texts, legal dictionaries, legal journals, and comments on court decisions. Then, the non-legal materials were in the form of books, research reports, journals, and other scientific works in the form of theses, papers, and relevant articles (Peter Mahmud Marzuki, 2017). The data collection technique in this legal writing used document study techniques or literature studies and field study techniques (interviews). Furthermore, this research's legal material analysis technique employed the syllogism method with a deductive mindset. The use of this method stemmed from the collection of major and minor premises; from these two premises, a conclusion was drawn.

DISCUSSION

National Land Agency's Responsibilities in Completing Overlapping Certificates

With the issuance of dual certificates by the Land Office, it can be seen that the National Land Agency has not implemented the general principles of good governance, particularly the principles of accuracy, the principle of legal certainty, and the principle of accountability in carrying out its duties. Based on Article 12 of Government Regulation Number 24 of 1997 concerning Land Registration paragraph (1), which states, "Land registration activities for the first time include:

- a. Collecting and processing of physical data;
- b. Proof of rights and bookkeeping;
- c. Issuance of certificates;
- d. Presentation of physical data and juridical data;
- e. Storage of general data and documents".

Paragraph (2) states, "Activities to maintain land registration data include:

- a. Registration of transfer and encumbrance of rights;
- b. Registration of changes to other land registration data".

In Article 12, paragraphs (1) and (2) of Government Regulation Number 24 of 1997 concerning Land Registration, the National Land Agency, before granting a right to land, is obliged to act carefully and scrupulously on the data submitted by the certificate applicant whether regarding physical data and juridical data. In addition, after the certificate requested by the certificate applicant is issued, the National Land Agency must maintain land registration data against transfers, encumbrances, and changes in other land registration data.

The principle of accountability requires that every implementation of tasks and the final results of government and development activities must be accounted for as well as possible to the public and the parties involved based on applicable laws and regulations (Cekli Setya Pratiwi, Shinta Ayu Purnawmawati, Fauzi, 2016). This principle emphasizes that all activities and final results must be reported and accounted for to the public or the people correctly and honestly with complete data/ information. This principle is obliged to apply, considering that government activities have an impact and also because the people fund government activities, thus, activities and their outcomes must be accountable. Therefore, activities must be reported from start to finish, including successes and failures. Hence, the apparatus can be sued if a failure occurs due to intentional/ negligence.

The principle of accountability relates to the principle of accuracy and legal certainty. In the case of dual certificates, the National Land Agency should be more careful or thorough in issuing certificates, and also, in the process, the National Land Agency should be careful; thus, the certificates issued do not cause problems in the future. Then, in the principle of legal certainty, in this case, the applicant as the owner of the land title certificate should have legal certainty, but because of the double or dual certificates, the result is that the applicant does not get legal certainty. The National Land Agency should carry out its duties carefully and create legal certainty to be appropriately accountable to the public.

Based on Article 35 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/ Head of the National Land Agency of the Republic of Indonesia Number 21 of 2020 concerning Handling and Settlement of Land Cases which states that "Cancellation of Legal Products due to administrative defects and/or juridical defects as referred to in Article 29 paragraph (1) letter a due to:

- a. Errors in the process/ procedure of issuing land rights, registration of rights, and the process of maintaining land registration data;
- b. Errors in the process/ procedure for measuring;
- c. Errors in the process/ procedure for issuing a replacement certificate;

- d. Errors in the process/ procedure for issuing Mortgage certificates;
- e. Misapplication of laws and regulations;
- f. Right subject error;
- g. Right object error;
- h. Right type error;
- i. Overlapping land rights;
- j. Overlapping with forest areas;
- k. Error in determinating land consolidation;
- l. Error in asserting land as a land reform object;
- m. Errors in the process of granting permission for the transfer of rights;
- n. Errors in the process of issuing cancellation decrees;
- o. There is a criminal court decision with permanent legal force proving the existence of a criminal act of forgery, fraud, embezzlement, and/or other criminal acts;
- p. There are documents or data employed in the process of issuing certificates that are not products of the agency based on a statement from the agency concerned;
- q. There is a court decision in which, in its legal considerations, it is proven that there is a fact; there is a defect in the issuance of the Ministry's legal product and/ or, there is a defect in the legal action in the transfer of rights but in the ruling, the decision is not expressly stated".

Based on the description of the Article above, there is a legal defect in the principle of accountability, namely overlapping land rights, which has resulted in the issuance of dual certificates. Thus, the National Land Agency has neglected its responsibilities as a land officer in carrying out its duties. The principle of accountability requires that every implementation of tasks and the final results of government and development activities must be accountable to the public and related parties as well as possible. Accountability to the public is an obligation; in addition, it is also reasonable to do because the people are the highest holders of state sovereignty under the 1945 Constitution.

Furthermore, in Article 34 paragraph (2) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/ Head of the National Land Agency of the Republic of Indonesia Number 21 of 2020 concerning the Handling and Settlement of Land Cases, it is explained that "If there are one or several overlapping certificates in a plot of land, whether the whole or in part, then the intended certificate is subject to Handling as referred to in Article 6 paragraph (1)". Meanwhile, Article 6 paragraph (1) mentions that "Dispute and Conflict Handling is carried out through the stages of:

- a. Case Study;
- b. Initial Case Title;
- c. Study;
- d. Expose of Study Results;
- e. Coordination Meetings;
- f. Final Case Title; and
- g. Settlement of Cases.

Article 6, paragraph (3) states that "In the case of Disputes and Conflicts classified as Moderate Cases or Mild Cases, the handling can be carried out without going through all the stages referred to in paragraph (1)". It means that overlapping land disputes are classified as Serious Cases because, according to the explanation in Article 34 paragraph (2) above, if there is an overlapping certificate in a plot of land, then the handling must be carried out through the sequence of stages contained in Article 6 paragraph (1) as described above.

CONCLUSION

With overlapping land rights resulting in dual or double certificates, it can be seen that the National Land Agency neglects its responsibilities in carrying out its duties. In particular, it does not apply the principle of accuracy, the principle of legal certainty, and the principle of accountability. The principle of accountability requires that every implementation of tasks and the final results of government and development activities must be accountable and accounted for as well as possible to the public and related parties. The principle of accountability relates to the principle of accuracy and the principle of legal certainty. In the case of dual certificates, the National Land Agency should be more careful or thorough in issuing certificates, and also, in the process, the National Land Agency should be careful; thus, the certificates issued do not cause problems in the future. Furthermore, the principle of legal certainty, in this case, the applicant as the owner of the land title certificate, should have legal certainty, but because of the double or dual certificates, the result is that the applicant does not get legal certainty. Thus, in carrying out its duties, the National Land Agency should act carefully and create legal certainty to be appropriately accountable to the public. Accountability to the public is an obligation. Additionally, it is also reasonable to do it because the people are the highest holders of state sovereignty under the 1945 Constitution.

REFERENCES

- Government Regulation Number 24 of 1997 concerning Land Registration
Regulation of the Minister of Agrarian Affairs and Spatial Planning/ Head of the National Land Agency of the Republic of
Indonesia Number 21 of 2020 concerning Handling and Settlement of Land Cases
- Aqila, A. W. (2018). *Pembatalan Sertifikat Ganda Hak Milik Atas Tanah Terkait Asas Akuntabilitas Melalui Studi Kasus Putusan No. 170/G/2018/PTUN.SMG. 170*, 1–11.
- Cekli Setya Pratiwi, Shinta Ayu Purnawmawati, Fauzi, C. Y. P. (2016). *ASAS-ASAS UMU PEMERINTAHAN YANG BAIK* (I. N. Prof. Adriaan W. Bedner (ed.)). Lembaga Kajian dan Advokasi untuk Independensi Peradilan (LeIP).
- Johny Ibrahim. (2006). *Teori dan Metode Penelitian Hukum Normatif (Cet-1)*. Bayumedia.
- Marzuki, P. M. (2005). *Penelitian Hukum*. Kencana.
- Mutia, Cut Lina Hukum, F., Unggul, U. E., & Jeruk, K. (2004). Sertipikat Hak Milik Atas Tanah Sebagai. *Lex Jurnalica (Journal of Law)*, 1(3), 8–13.
- Peter Mahmud Marzuki. (2017). *Pengantar Ilmu Hukum* (10th ed.). Kencana.

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