

Implementation of Dispute Resolution Regarding Double Certificates as Proof of Ownership of Land Rights at the Maros District National Land Office

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Abstract

This research aims to analyze the factors that cause the issuance of double certificates in Maros Regency. This type of research uses empirical legal research methods, namely methods sourced from primary data using the interview method. The results of this research show that, First: Land rights give the authority to use a certain plot of land accompanied by the obligation to look after the land; Research recommendations for BPN to increase outreach or education to the public regarding the importance of mapping land plots and re-mapping land plots that have been certified and for the public to be more careful in protecting the land assets they own so that land disputes do not occur in the future.

1. Introduction

The land is a basic need for people to build houses on it to live with their families for generations. Apart from that, it is also used as agricultural land and plantations to fulfill daily life. It is even used as a place for business, trade, industry, plantations, workshops, and other business places.

However, there are still many people who own land whose land has not yet been certified, only using the basic ownership principles, namely, Detail, PBB, sale and purchase deed, inheritance deed, waqf deed, and a certificate of cultivation or management from the village head, but this has been controlled for years.

Land that has been certified, but there are still many overlapping certificates and multiple certificates with different names or the same name. A double certificate is a certificate of ownership obtained either legally or illegally which at any time can give rise to legal consequences (disputes) for both the subject of the right and the object of the right. This double certificate is a letter of proof of ownership of land rights

issued by the BPN legal institution which is issued over one object of rights that overlaps one land object in part or in whole, which can result in legal consequences.¹

Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (hereinafter abbreviated to UUPA) is the Government's effort to provide legal certainty regarding land rights, namely legal certainty that focuses on the land sector, especially regarding control and/or ownership.

The form of legal protection related to land rights is a certificate or ownership right to the land owned.² Then, to guarantee legal certainty regarding these land plots, the Government followed up on the UUPA by issuing Government Regulation Number 24 of 1997 concerning Land Registration, which in Article 3 states that registration aims to:

- a. to provide legal certainty and legal protection to holders of rights to a plot of land, apartment units and other registered rights so that they can easily prove themselves as holders of the rights in question ;
- b. to provide information to interested parties, including the government, so that they can easily obtain the data needed to carry out legal actions regarding registered land plots and apartment units ;
- c. for the implementation of orderly land administration.

Based on the above, it can be seen that the purpose of holding land registration in Indonesia is to provide legal certainty (*rechts kadaster*) and legal protection to holders of rights to a plot of land, both holders of land rights carried out by individuals and by legal entities, in managing and utilize the land under his control, this is of course in line with Article 33 paragraph (3) of the 1945 Constitution which is the basis for the formation of the UUPA.

Registration is mandatory for the holders of the rights concerned to ensure that they obtain certainty regarding their rights. If it is not mandatory, then holding land registration, which will require a lot of energy, tools, and costs, will of course have no meaning at all. Meanwhile, Article 19 of the UUPA is addressed to the government as an instruction, so that throughout Indonesia, land registration is carried out in the form of "rights-kadaster ", meaning that it aims to guarantee legal certainty. The land issue is a problem that concerns the most basic rights of the people.³

Therefore, to obtain a guarantee of legal certainty, it is very necessary to have complete written legal instruments (which are implemented consistently) as well as

¹ Chandra, ROF (2020). Settlement of disputes over multiple certificates of land rights according to PP No. 24/1997 concerning Land Registration. *Dynamics, Scientific Journal of Legal Studies*, 26 (3), 358-371.

² Salim, A. (2019). Settlement of Legal Disputes Against Ownership Certificate Holders by Issuing Multiple Certificates. *USM Law Review Journal*, 2 (2), 174-187.

³ Dewandaru, PA, Hastuti, NT, & Wisnaeni, F. (2020). Settlement of land disputes regarding double certificates at the national land agency. *Notarius* , 13 (1), 154-169.

effective land registration. With the availability of written legal instruments, anyone can use and control land, including how to obtain it, what rights, obligations, and prohibitions there are in controlling land with certain rights, what sanctions they face if they ignore the provisions stipulated, as well as other matters relating to the control and use of the land he owns.

As proof of the legal certainty of land rights, the government issues a land rights certificate. According to Article 32, paragraph 1, of Government Regulation Number 24 of 1997, a certificate is a proof of rights that is valid as a strong means of proof regarding the physical data and juridical data contained therein, as long as the physical data and juridical data are based on existing data in the measurement letter and land rights book in question.

The issuance of land certificates has the aim of providing the interests of rights holders based on physical data and juridical data as recorded in the land book. One of the proofs of land ownership is a proof of land ownership rights, which have been recognized in Indonesia since the implementation of the land registration system. A land certificate is different from a land book. ^[1] By issuing a certificate of land rights, the land rights holder should have strong evidence of legal certainty regarding the land they control. However, the certificate does not provide a guarantee of legal certainty for land rights controlled by the land rights holder.

Even though a certificate of land rights has been issued, which is claimed to provide a guarantee of legal certainty over a plot of land, there are often still problems with that plot of land. The main problem regarding land is the gap that occurs between the limited availability of land, which is not in line with the increasing need for land, and rapid development. Conflicts of interest in ownership and control of land often give rise to land cases.

The Ministry of Agrarian Affairs and Spatial Planning / National Land Agency (ATR/BPN) has been designated as a State institution which has the task of carrying out government affairs in the field of agrarian and spatial planning and is expected to become the leading sector *in* handling and resolving land cases.⁴

In Article 1 Point 1 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, it is explained that:

"Land Cases, hereinafter referred to as Cases, are disputes, conflicts or land cases submitted to the Ministry of Agrarian Affairs and Spatial Planning/National

⁴Article 4 Presidential Regulation of the Republic of Indonesia Number 47 of 2020 concerning the Ministry of Agrarian Affairs and Spatial Planning and Article 2 of Presidential Regulation of the Republic of Indonesia Number 48 of 2020

About the National Land Agency

Land Agency, Regional Offices of the National Land Agency, Land Offices by their authority to obtain handling and resolution by the provisions of statutory regulations.
."

In this article, it is explained that there are three typologies of land cases, namely disputes, conflicts and land cases, where article 1 points 2 (two) to 4 (four) of the Regulation, it is explained that disputes are land disputes between individuals, legal entities or institutions that do not have a broad impact. Conflict is a land dispute between individuals, groups, classes, organizations, legal entities, or institutions that has a tendency or has had a wide impact. Meanwhile, cases are land disputes which are handled and resolved through judicial institutions.

Land problems that are quite often found are the existence of double certificates or overlapping certificates. In this case, there is more than one different certificate for the same plot of land, where there should only be one certificate for one plot of land unless otherwise stipulated in the law, as contained in Article 34 paragraph (1) of the ATR Ministerial Regulation/ Head of BPN Number 21 of 2020. It was further emphasized that if there are one or several overlapping certificates in one plot of land, either in whole or in part, the certificates in question will be handled through the stages of case study, initial title, research, exposure of research results, coordination meeting, , final title, and case resolution.

A plot of land that has multiple certificates can result in legal uncertainty for the parties holding land rights, which is certainly not expected in land registration in Indonesia. Cases of duplicate certificates still frequently occur in several regions in Indonesia which result in land certificate holders accusing each other that the certificates they have are real even though one of the double certificates is fake where the object stated on the certificate is not the real thing, , so that to obtain legal certainty regarding the land title certificate, one of the multiple certificate holders submits a complaint to the Local Land Office. If the Land Office's verification process does not conclude then the authority to prove multiple certificates of land rights continues to the court which is deemed to have competence in providing legal certainty to the right holder and canceling one of the certificates so that only one certificate is valid and has the object. others are not the objects stated in the certificate.⁵

This is one of the consequences of the land registration system in Indonesia which uses a negative publication system (with a positive tendency). Where the certificate is only a strong proof and not an absolute/perfect proof. This means that the information contained therein has legal force and must be accepted by the Judge as true information as long as there is no evidence to prove otherwise.⁶ The land

⁵Soni Harsono, Uses of Certificates and Problems, Yogyakarta: National Seminar, 9 July 1992, p. 6.

⁶Arie S. Hutagalung, 2000. Application of the "Rechtstverwerking" Institution to Overcome

registration process is the first step to present the reliability of land data. Measurement and mapping are the main heart of the land registration process so that the data presented can be relied upon in various land transaction activities. Therefore, land administration requires a comprehensive land registration base map.⁷

In this way, the court will decide which evidence is correct, if it turns out that the data from the land registration is incorrect, changes and corrections will be made to the court's decision.⁸ This certainly raises concerns for certificate owners. Where the certificate he holds cannot fully guarantee legal certainty regarding his land plot. The certificate still faces the possibility of a lawsuit from other parties who also feel they have rights to the land, moreover, there is the possibility of another certificate being issued on the plot of land they own.

2. Research Methods

Legal research is a process carried out to solve legal issues faced by identifying legal problems, carrying out legal reasoning, analyzing the problems faced, and then providing solutions to these problems.⁹ According to Syahrudin Nawi, empirical research is research carried out with an approach to the legal reality in society which is based on the existence of symptoms in the form of a gap between expectations and reality in the legal field. In this connection, the research orientation is *law in action*.¹⁰ This research was conducted in Maros Regency. The consideration for choosing this location was because Maros Regency is a district that has a very large area and has many registered land plots, so it has complex land cases. Apart from that, in Maros Regency many people have carried out Land Registration based on physical control for many years, thus attracting researchers' interest in conducting research in Maros Regency.

3. Results and Discussion

The problem of double certificates often referred to as overlapping certificates, either partially or completely, also occurs in Maros Regency. The

Weaknesses

Negative Publication System in Land Registration, Law and Development, University of Indonesia, Jakarta. Pg. 329

⁷ Salam, S., & Dahlan, TA MULTIPLE CERTIFICATES AND THE URGENCY OF UPDATING THE BASE MAP OF LAND REGISTRATION. *Law Pulpit*, 33 (1), 114-137.

⁸ Soedharyo Soimin, 1993, Land Rights and Acquisition. Sinar Graphics, Jakarta, p. 82.

⁹ Peter Mahmud Marzuki, 2011. Legal Research, Kencana Pranada Media Group, Jakarta, pp.35 31

Mukti Fajar and Yulianto Achmad. 2010. Dualism of Normative and Empirical Legal Research. Yogyakarta: Student Library. p.34.

¹⁰ Syahrudin Nawi. 2018. Normative Legal Research Versus Empirical Legal Research. Sixth Printing, PT. Umitoha Ukhuwah Graphics. Makassar, p.3.

Ministry of Agrarian Affairs and Spatial Planning / National Land Agency (ATR/BPN), in this case the Maros Regency Land Office, is certainly expected to be the *leading sector* in handling and resolving land cases, especially regarding the double certificate issue.

Handling of land disputes is generally regulated in 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, in consideration of which the main purpose of issuing this regulation is to provide legal certainty to implement land policy which is one of the duties and functions of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency.

In Article 1 number (1) ATR/BPN Ministerial Regulation No. 21 of 2020 explains that Land Cases, hereinafter referred to as Cases, are land disputes, conflicts, or cases submitted to the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, Regional Offices of the National Land Agency, Land Offices by their authority to obtain handling and resolution by the provisions of the legislation.

Land problems or cases that are quite often found are the existence of double certificates or overlapping certificates. In this case, there is more than one different certificate for the same plot of land, where there should only be one certificate for one plot of land, unless otherwise stipulated in the law, as contained in Article 34 paragraph (1) of the ATR Ministerial Regulation/ Head of BPN Number 21 of 2020. It was further emphasized that if there are one or several overlapping certificates in one plot of land, either in whole or in part, the certificates in question will be handled through the stages of case study, initial title, research, exposure of research results, and coordination meeting. , final title, and case resolution.

According to Mirna, as Head of the Control and Dispute Handling Section of the Maros Regency Land Office, if there are double certificates or overlapping certificates, the District Land Office. Maros conducted a study of the problem and offered to carry out mediation to find a middle way. If both parties agree, a peace report will be made and repairs will be made to the two problematic certificates, but if both parties do not agree, it will be recommended to take this route. law to test the validity of the certificate or test the ownership status of the land plot.

Meanwhile, according to Muh. Ricky Subarkah, as Substance Coordinator for Handling Disputes, Conflicts and Cases, if there is a case of double certificates or overlapping certificates, the handling will be carried out as contained in the Regulation of the Minister of ATR/Head of BPN Number 21 of 2020 starting from case study, initial title, research, exposing the results of the research, coordination

meeting, final title, and case resolution. As for the outcome of the case resolution, there are 3 (three) Criteria, Criterion One (K1) if the settlement is final, in the form of a cancellation decision, a peace decision; or a rejection letter cannot grant the application. Criterion Two (K2) is a letter of direction for Case Settlement or a letter of determination of the entitled party but the settlement decision cannot be followed up because there are conditions that must be fulfilled which are under the authority of another agency, a letter of recommendation for Case Settlement or a Settlement proposal from the Land Office to the Regional Office. Criterion Three (K3) in the form of a notification letter is not the authority of the Ministry which is often stated in recommendations to take legal action. However, if during the handling process it is discovered that there are overlaps or administrative defects in the issuance of certificates, then the certificate can be canceled due to administrative defects.

Cancellation of a Certificate due to administrative defects is regulated in Article 64 of Government Regulation Number 18 of 2021 which states that:

- (1) Cancellation of Land Rights due to administrative defects can only be done:
 - a. before a period of 5 (five) years from the issuance of the Land Rights Certificate, to:
 1. Land Rights issued for the first time and not yet transferred; or
 2. Land Rights that have been transferred but the parties do not have good faith in the transfer of these rights by the provisions of laws and regulations; or
 - b. due to overlapping land rights.
- (2) If the 5 (five) year period as intended in paragraph (1) letter a is exceeded, the cancellation will be carried out through a judicial mechanism.

This is also clarified in Article 35 of the Regulation of the Minister of ATR/Head of BPN Number 21 of 2020 which states that cancellation of legal products due to administrative defects and/or juridical defects as intended in Article 29 paragraph (1) letter a is caused by:

- 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 measurement process/procedure;
- c. errors in the process/procedure for issuing replacement certificates;

- d. errors in the process/procedure for issuing the Certificate of Rights Dependents;
- e. errors in the application of statutory regulations;
- f. error of the subject of rights;
- g. the wrong object of rights;
- h. rights type error;
- i. overlapping land rights;
- j. overlaps with forest areas;
- k. errors in determining land consolidation;
- l. errors in land confirmation of land reform objects;
- m. errors in the process of granting permission to transfer rights;
- n. errors in the decision letter issuance process Cancellation;
- o. there is a criminal court decision with permanent legal force that proves the existence of a criminal act of counterfeiting, fraud, embezzlement and/or other criminal acts;
- p. there are documents or data used in the certificate issuance process that are not products of the agency based on a certificate from the agency concerned;
- q. There is a court decision which in its legal considerations proves that there is a fact that there is a defect in the publication of the Ministry's legal product and/or that there is a defect in the legal action in the transfer of rights but the decision is not stated expressly.

From the technical side, Asrullah, as the Substance Coordinator of Cadastral Measurement and Mapping, explained that if there is a case of double certificates or overlapping certificates, the resolution is from BPN, namely, the first is to increase socialization of the importance of land certificates or protecting land plots, managing land plots, maintaining boundary markers, the second conducts outreach, the third maps certified or registered land plots. The community's solution is to maintain the boundaries of land plots, the second is to manage the land plots productively so that other people who have bad intentions towards the plot of land do not admit that they own it, the third is to hold mediation.

4. Conclusion

Efforts to resolve double certificates include conducting a study of the

problem and offering mediation to find a middle way. If both parties agree, a peace report will be made and repairs will be made to the two problematic certificates, but if both parties do not agree, then it will be recommended to take legal action to test the validity of the certificate or test the ownership status of the land plot. For the BPN to increase outreach or education to the public regarding the importance of mapping land plots and re-mapping land plots that have been certified.

References

Book

- Arie S. Hutagalung, 2000. Application of the "Rechtstverwerking" Institution to Overcome the Weaknesses of the Negative Publication System in Land Registration, Law and Development, University of Indonesia, Jakarta.
- Budi Harsono. 1993. Indonesian Agrarian Law, History of the Formation of Basic Agrarian Laws, Content and Implementation, Trisakti University Publishers, Jakarta,
- Mukti Fajar and Yulianto Achmad. 2010. Dualism of Normative and Empirical Legal Research. Yogyakarta: Student Library.
- Peter Mahmud Marzuki, 2011. Legal Research, Kencana Pranada Media Group, Jakarta,
- Soedharyo Soimin, 1993, Land Rights and Acquisition. Sinar Graphics, Jakarta,
- Soni Harsono, Uses of Certificates and Problems, Yogyakarta: National Seminar, 9 July 1992,
- Syahrudin Nawawi. 2018. Normative Legal Research Versus Empirical Legal Research. Sixth Printing, PT. Umitoha Ukhuwah Graphics. Makassar,

Journal

- Chandra, ROF (2020). Settlement of disputes over multiple certificates of land rights according to PP No. 24/1997 concerning Land Registration. *Dynamics, Scientific Journal of Legal Studies*, 26 (3), 358-371.
- Dewandaru, PA, Hastuti, NT, & Wisnaeni, F. (2020). Settlement of land disputes regarding double certificates at the national land agency. *Notarius* , 13 (1), 154-169.
- Salam, S., & Dahlan, TA Dual Certificates and the Urgency of Updating the Land Registration Base Map. *Law Pulpit* , 33 (1), 114-137.

- Salim, A. (2019). Settlement of Legal Disputes Against Ownership Certificate Holders by Issuing Multiple Certificates. *USM Law Review Journal* , 2 (2), 174-187.
- Taqiyyah, MA, & Winanti, A. (2020). Legal Protection for Multiple Land Certificate Holders Based on Government Regulation no. 24 of 1997. *Journal of Justisia: Journal of Law, Legislation and Social Institutions* , 5 (1), 77-93.