

The Position of Land Ownership Certificates in Settlement of Inheritance Disputes

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Abstrak

Land is one of the basic human needs. This article is motivated by the lack of legal certainty regarding land ownership. Many land disputes continue to arise due to inappropriate locations or boundaries, such as duplicate certificates. A certificate of ownership is a copy of the land register and its dimensions, if accompanied by a cover paper, the form of which is determined by ministerial regulations. The aim of this research is to understand certificates as proof of rights and title to land. The method used in this research uses a normative method, by analyzing existing legislation and literature. Based on the large number of cases related to land, it can be concluded that ownership of a land certificate is an important basic proof of land ownership. Ownership rights to land remain with the owner as long as the owner does not release or surrender his rights.

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1. INTRODUCTION

Agrarian law is something that really influences people's lives because in agrarian law there are regulations regarding land where the people live. Land plays such an important role in the lives of the Indonesian people that it is regulated in Article 33 paragraph (3) of the 1945 Constitution as the basis of the Indonesian Constitution. The state has control rights over land, authority in the land sector is exercised by the National Land Agency. Law no. 23 of 2014 concerning Regional Government Article 13 of Law no. 23 of 2014 concerning Regional Government regulates the authority of the Provincial Government. Article 13 regulates the authority of the Provincial Government. One of the points covered by this authority is the implementation of mandatory provincial affairs, including: Organize and determine provincial spatial planning plans in accordance with statutory provisions. Meanwhile, Article 14 paragraph (1) letter (k) regulates the authority of Regency/City Regional Governments. One of the points covered by this authority is the administration of mandatory district/city affairs, including, the provision of services in the land sector.

From these two articles, it can be understood that authority related to services in the land sector is one of the mandatory matters which falls under the authority of the Provincial Regional Government to regulate, and is delegated to the Regency/City Regional Government for its implementation. However, the implementation of this regulation can give rise to various new problems related to the form of institutions, division of tasks, work procedures and services regarding the form of institutions, division of tasks, work procedures and services in the land sector so that the Basic Agrarian Law can be implemented in its entirety and in line with Law No. 23 of 2014. This condition was then exploited by individuals to take advantage of the weaknesses of law enforcement, resulting in an increase in the number of land disputes.

Agrarian law is a group of various legal fields, each of which regulates control rights over certain natural resources. These various areas of law include land law, water law, mining law, and so on. The juridical basis of national agrarian law is Law No. 5 of 1960 concerning basic agrarian regulations (UUPA) and the 1945 Constitution Article 33

paragraph 3 which reads "The land, water and natural resources that are controlled are controlled by the State and used for the greatest prosperity of the people".

Agrarian law is broadly divided into 2 areas, namely civil agrarian law which regulates all legal provisions originating from the rights of individuals and legal entities which allow, require and prohibit legal actions relating to land such as buying and selling. The second part is administrative agrarian law which contains all of the legal provisions that authorize officials to carry out state legal practices and take action on agrarian problems that arise, such as land registration, land acquisition, or revocation of land rights.

Inheritance law is one part of civil law as a whole and a small part of family law. Inheritance law is closely related to the scope of human life, because every human being will definitely experience death. The legal consequences that arise from the legal event of someone's death include the issue of how to manage and continue the rights and obligations of someone who dies. Settlement of rights and obligations as a result of someone's death is regulated by inheritance law.

The form and system of inheritance law is closely related to the form of society and the nature of the family. Meanwhile, the kinship system in Indonesian society is based on the lineage drawing system, related to the lineage drawing system, as is generally known in Indonesia, there are at least three types of lineage systems.

Islamic inheritance law has unique characteristics as part of Islamic sharia whose implementation cannot be separated from *aqidah* (faith). A person does not receive or will receive inheritance according to the portion determined by Allah outside of his will or will and there is no need to ask for his rights. Likewise, people who will die someday do not need to plan the distribution of their assets after they die. Because his assets will automatically be transferred to his heirs according to the determined income unless he wants *tabarru* or a will. The provisions of *Nashiban Mafrudlan* indicate that the details are certain and no human effort or power can change them.

Regulations regarding inheritance law are regulated in book II of the Civil Code (hereinafter referred to as the Civil Code). This regulation is included in Book II of the Civil Code because the Civil Code views inheritance law as material rights to the assets of a person who dies as stated in article 528 of the Civil Code. Article 832 paragraph (1) of the Civil Code states that: "According to the law, those who have the right to be heirs are blood relatives, whether legal according to law or outside marriage, and the husband or wife who has lived the longest, according to the regulations. the following.

Civil Inheritance Law is the distribution of inherited assets regulated by civil law or general law and applies in Indonesia. The distribution of inheritance according to the Inheritance Law (Civil Code) can be divided into four groups of heirs, namely: Group I: Including the husband or wife and/or children of the heir who are entitled to receive the inheritance. The division is that the wife or husband and their children each get 1/4 share. Group II: These are those who inherit if the heir does not yet have a husband or wife and children. So, those entitled to inheritance are the heir's parents, siblings and/or descendants. Group III: In this group, the heir does not have siblings so that the inheritance is the family in a straight line upwards, both from the mother's and father's lines. For example, those who get a share are both maternal and paternal grandparents. The division is broken down into 1/2 part for the father's line, and 1/2 part for the mother's line. Group IV: Those entitled to inheritance are the surviving blood relatives in the upper line. They get 1/2 share. Meanwhile, heirs in other lines and those closest in rank to the heir receive 1/2 of the remainder.

2. RESEARCH METHOD

This research uses normative legal research methods. Normative legal research is legal research carried out by examining library materials or secondary data. This is done by reviewing all laws and regulations related to the legal issue being handled. For research for practical activities, this legal approach will open up opportunities for researchers to study whether there is consistency and suitability between one law and other laws.

3. RESEARCH RESULTS AND DISCUSSION

The occurrence of errors or mistakes in arranging land ownership certificates has become a common situation in society. The issue of land ownership in society is a very sensitive and complex issue, so that conflicts often arise between members of different communities, caused by disputes regarding land ownership rights.

The legal position of land ownership certificates, as contained in the Gorontalo City District Court Decision Number 39/Pdt.G/2021/PN Gto., can be studied based on several aspects, including:

In the context of legality, the judge's assessment can involve considering the arguments of the parties to the dispute. This includes looking at the existence of a certificate of ownership and certificate of title to the land. The judge may refer to statutory regulations related to land, such as the UUPA (Un Legal certainty in the land context can include an understanding of the regulations governing land, especially the UUPA.

Legal certainty can also be linked to the role of the National Land Office in issuing land title certificates. This certificate is considered as concrete and legal proof of land ownership, which can provide legal certainty for the owner (the Basic Agrarian Law) and its implementing regulations.

In the context of evidence, land ownership certificates are considered strong and valid evidence of land rights. The application of Article 19 of the UUPA which emphasizes the importance of land registration to create legal certainty can strengthen the position of certificates as a means of proof.

This aspect considers how the process of obtaining a land ownership certificate can produce a land ownership certificate that has legal force. This involves land registration procedures that comply with applicable regulations.

Regarding the cancellation of land ownership certificates, Article 1 point 14 in the Minister of State for Agrarian Affairs Regulation No. 9 of 1999 explains that cancellation of land rights refers to the act of canceling the decision to grant a land rights certificate. This action is taken when the decision is proven to have administrative legal defects in the process of issuing it or when it must be taken to comply with a court decision that has obtained permanent legal force.

Cancellation of land rights includes cancellation of: (a) the decision to grant rights; (b) land title certificate; and (c) Decisions on granting rights in the framework of land control arrangements. The cancellation of land rights was issued due to administrative legal defects in regulating the granting decision and/or implementing court decisions that have obtained permanent legal force. Cancellation of land rights is carried out by decision of the Minister responsible for the agrarian/defense sector ("Minister"), which the Minister can delegate to the Head of the Regional Office of the National Defense Agency, namely the National Defense Office at the Provincial level ("Regional Office") or an Official designated. Cancellation of land rights due to administrative law defects.

The decision to cancel land rights due to administrative law defects in its regulation can be made due to (1) a request from an interested party or (2) an authorized official without a request. Cancellation of land rights due to defects in administrative law through applications from interested parties submitted directly to the Minister or appointed official

or through the Head of the Land Office, namely the National Defense Agency at the Regency/City level. Meanwhile, cancellation of land rights due to defects in administrative law without going through a request by an authorized official is carried out if it is discovered that there are administrative law defects in the process of controlling the decision to grant rights or certificates without a request.

Article 5 of the UUPA (Basic Agrarian Law) indeed confirms that the juridical basis for the formation of the UUPA comes from customary law. Basically, UUPA recognizes and integrates customary law principles in the national agrarian law system. In this context, a certificate of land ownership originating from customary law can be evidence that can be recognized, as long as it meets certain criteria in accordance with the principles of agrarian law and applicable laws and regulations.

Article 19 of the UUPA confirms that proof of title, such as a land title certificate, is considered the strongest proof of evidence regarding the physical data and juridical data contained therein. The evidentiary strength of a land title certificate depends on the conformity of the data contained in the certificate with the data contained in the measurement letter and land title book in question. This shows the importance of consistency and accuracy in the land registration process. Article 32 of Government Regulation Number 24 of 1997 emphasizes that the production of land title certificates at the Land Office must be supported by a registration process that is in accordance with government regulations. This process involves recording and verifying physical and legal land data.

Cases of evidence in land rights cases in a court decision must be decided and accompanied by the reasons and basis for the decision containing articles from statutory regulations that are in accordance with the legal principles or sources of law that are the basis for adjudicating the case. The judge's argumentation in a judge's consideration itself becomes the judge's responsibility to the community for the decision made, this is related to the litigants and the court, so that the judge's argumentation in the judge's consideration has objective value and can be accounted for.

The National Defense Agency (BPN) is a non-ministerial government agency in Indonesia which has the task of carrying out government duties in the defense sector nationally, regionally and sectorally. BPN was previously known as the Agrarian Office. BPN is regulated through Presidential Regulation Number 10 of 2006 and Presidential Regulation Number 83 of 2012.

The authority to cancel land rights is regulated in the provisions of Articles 12 and 14 of the Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 3 of 1999 concerning the Delegation of Granting and Cancellation of Decisions Granting State Land Rights.

Registration of Land Rights According to UUPA. Article 19 of the Basic Agrarian Law (UUPA) requires registration of land rights throughout Indonesia, with Articles 23, 32 and 38 of the UUPA mandating that rights holders register the transfer, deletion and encumbrance of these rights. This registration is important because without it, many legal issues can arise. Registration of rights is strong evidence in accordance with the provisions of Article 23 paragraph (1) UUPA, both for ownership rights and transfer, deletion and encumbrance of other rights which must be registered in accordance with Article 19 UUPA. The same applies to business use rights (Article 32 UUPA) and building use rights (Article 38 UUPA), as well as all changes in rights status related to registration.

Certificate as Proof of Rights. The government provides proof of title in the form of a certificate as legal guarantee regarding land rights. This certificate has legal force and is considered strong evidence. The judge must accept the information contained in the certificate as true unless there is other evidence that can refute it. However, if there are

overlaps or errors in procedures and mapping, the certificate is considered legally defective and can have legal consequences for the holder.

Cancellation of Land Rights According to UUPA. The UUPA states that one of the reasons for the release of land rights is the cancellation of land rights. This can happen if there is a defect in administrative law or if it is required by a court decision that has permanent legal force. Cancellation of rights will result in the owner losing his rights, and the land will become state property.

Thus, the text explains the importance of registering land rights in accordance with the UUPA and the role of certificates as strong evidence. In addition, cancellation of land rights is a mechanism regulated by law if there is a defect in administrative law or a court decision that requires the cancellation of rights.

Removal of a certificate of ownership of land is a legal process carried out to end the ownership rights of a particular person or entity to a plot of land registered in the certificate. Removal of land ownership certificates can occur for various reasons, and the process can vary depending on the legal regulations in force in a country.

The legal consequence that arises after the National Land Agency issues a Decree of Cancellation of a certificate of land rights is that the certificate loses its validity as valid evidence of land rights. Furthermore, the National Land Agency will record the cancellation of this certificate in the general register and other administrative documents used in land registration. In addition, the certificate that has been canceled must be destroyed or withdrawn from circulation, so that the owner no longer has ownership rights to the land. Thus, the certificate of ownership is no longer valid, and the right to ownership of the land is no longer his right.

4. CONCLUSION

By issuing a certificate during registration activities, it is intended that rights holders can easily prove their rights. Therefore, a certificate is a strong piece of evidence as intended in Article 19 of the UUPA. Certificates are issued for the purpose of proving that the holder of the rights in question is in accordance with the physical data and juridical data that have been registered in the land book. The physical data and juridical data stated in the certificate must be in accordance with the data contained in the relevant land book and measurement letter. By issuing a land title certificate, the owner is given legal certainty and legal protection to prevent legal disputes that occur in the future as a result of parties who feel disadvantaged by the issuance of a land certificate.

5. BIBLIOGRAPHY

- Adrian Sutedi, 2009, *Peraihan Hak Atas Tanah dan Pendaftarannya*, Sinar Grafika, Jakarta.
- Andy Hartanto, *Hukum Waris*, Surabaya, Lasbang Justitia, 2015, Cetakan Pertama, hal.
- Elza Syarif, 2012, *Menuntaskan Sengketa Tanah melalui Pengadilan Khusus Pertanahan*, PT.Gramedia, Jakarta
- Rusmadi Murad. "Penyelesaian Sengketa Hukum Atas Tanah" Bandung, Alumni, 2005
- Sudikno Mertokusumo, *Hukum dan Politik Agraria*, Karunika Universitas Terbuka, Jakarta, 2002.
- Tan Henny Tanuwidjaja, 'Akibat Hukum Pewarisan Karena Afwezeigheid Terhadap Ahli Waris Menurut Hukum Perdata Barat (B.W)' (2019) 3 (1) *Hukum Bisnis*