

Legal Certainty Regarding Multiple Land Rights Certificates In Indonesia

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Abstract

This study explains and informs about the legal certainty of double land certificates in Indonesia, because this is a legal problem that often arises especially in Indonesia. The research method is by researching sources from Google Scholar, library materials, and secondary materials. The results of the study indicate that the resolution of disputes over double land certificates is prioritized through a mediation process (non-litigation) if it is not proven then it is continued through the court process.

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1. INTRODUCTION

Land certificates are often disputed even to the Court. This arises because land has a very important function for people's lives, to obtain legal certainty, people need to register land in order to obtain a land certificate which functions as a strong proof of ownership (Saputra et al., 2021). Land certificate problems can be caused by several factors, one of which is the party issuing the land certificate who is wrong in carrying out land registration procedures that are not in accordance with the provisions explained in Government Regulation Number 24 of 1997 concerning Land Registration and the carelessness of land registration officers. Three other factors can also be caused by the community itself who do not understand the importance of land certificates as proof of legal ownership and there is no land registration map available in the area (Dewandaru et al., 2020). The issuance of a land certificate is a strong proof of ownership of land rights issued by the National Land Agency ("BPN") in accordance with the provisions of the Laws and Regulations. We can see that with the very large number of certificates that have been issued by the BPN, it is very possible that errors will occur in the form of duplicate certificates for a plot of land where both certificates are original. One of the most common land conflicts is the case of overlapping certificates on one plot of land, sometimes two certificates or even three or more certificates. The following are examples of cases of duplicate certificates that occurred in Indonesia:

- (1) Decision No. 5/G/2020/PTUN.SRG. in which the decision Eneng Nursaman lives in Kp. Cipanas, Lebak Regency, Banten Province, hereinafter referred to as the plaintiff and sued the Head of the Lebak Regency Land Office hereinafter referred to as the defendant, also included third parties in the decision totaling 17 people including H. Endang hereinafter referred to as the Intervention Plaintiff II. The case in essence states the object of the dispute, namely the Certificate of Ownership No. 00261/Sajira Mekar Village, issued on June 23, 2016, Measurement Letter No. 220/Sajira Mekar/2016 dated

May 18, 2016 with a land area of 9,633 M2 in the name of Nji Chusdajah Binti Sarbini. Causing real losses for the Plaintiff because the Certificate has been issued on land owned by the Plaintiff. In fact, the disputed land since 1960 was registered in the name of Roeba Bin Maridin based on Girik No. 1276/331/9/Persil No. 72/Darat/II, SPPT No. 36.02.130.005.002. 0009.0, land area 22,703 M2, then on October 10, 1965 the land was granted to his son in the name of H. Nursaman Bin Roba, then on December 17, 1970 the land was granted to Eneng Fadlah Binti H. Nursaman. The State Administrative Dispute regulated in Article 1 number 10 of Law No. 51 of 2009 Concerning State Administrative Courts⁸ in Decision Number 5/G/2020/PTUN.SRG the plaintiff felt aggrieved by the decision issued by the Government Agency/Official, namely the National Land Agency (BPN) as the defendant, and the plaintiff asked the court to cancel or invalidate the issuance of the new certificate. This is the absolute authority of the State Administrative Court in resolving state administrative disputes .

- (2) The case that occurred in 2020, the Head of the Section for Determination of Rights and Registration of the Bandar Lampung National Land Agency (BPN), Heru Setiyono explained the overlapping problem between the Land Ownership Certificate Number: 536/1994 with a land area of 1,218 square meters with the Land Ownership Certificate Number: 13680/2014 with a land area of 1,671 square meters had been a case at the Bandar Lampung PTUN with case number Number: 26 / G / 2020 / PTUN-BL. Where the plaintiffs were Jelita Ferro Digraha, and the Head of the Bandar Lampung City Land Office as the defendant, and Rivico Oktavia as the second defendant in the intervention. Heru said that regarding case Number: 26 / G / 2020 / PTUN-BL, a decision has now been obtained that has permanent legal force (inkrach) with the verdict that the plaintiff's lawsuit was declared unacceptable (Kupastuntas.co, 2022).
- (3) In 2021, the former mayor of Semarang, Central Java, Sukawi Sutaript sued the National Land Agency (BPN) to the Semarang District Court because his land was recognized by someone else who also had a certificate on the same land. The 598 square meter land object is located on Jalan Lamongan Timur VII Number 51 Bendan Ngisor, Semarang, with the identity of Letter number 712 of 1984 which was legally owned by Sukawi in 1973. Meanwhile, at the same location point, a HGB certificate number 1079 also appeared which was owned by a businessman Tan Yangky Tanuputra with an area of 675 square meters from the Deed of Sale and Purchase Number 798 of 2017. Feeling that his land had been 'tricked', Sukawi asked for an explanation from the Semarang City National Land Agency (BPN) which then responded with a Land Registration Certificate No. 01.cek/2019 dated January 14, 2019 which explained that the location point of the land really belonged to Sukawi, while the dispute arose because there is an indication of overlap with HGB 1079 Bendan Ngisor Semarang owned by Tan Yangky Tanuputra. Based on Sukawi's statement, the BPN did not follow up on the findings of the duplicate certificate so that the dispute still occurs. In order to find the truth, Sukawi finally filed a lawsuit with the Semarang District Court. The lawsuit, said Sukawi, was filed because the BPN did not mediate and instead rejected the re-measurement application he submitted. (CNN, 2021)

The emergence of duplicate certificates is a problem that threatens every land rights owner where this can be caused by administrative problems or by criminal acts. The National Land Agency (" **BPN** ") as an institution established by the Government that has authority in national land affairs should be responsible for land disputes, especially related to duplicate certificates. In addition, there needs to be protection and legal certainty by the State for land rights holders so that land rights holders are not injured in their rights. Related to the above, the author is interested in studying in more depth the scientific paper entitled

"Legal Certainty Regarding Dual Certificates of Land Rights in Indonesia". From the case above, the problem is related to How is the legal certainty regarding dual certificates of land rights in Indonesia?

2. RESEARCH METHODS

This study uses normative research (Kartika & Laitupa, 2022) with a legal research method carried out by researching sources from Google Scholar, library materials or secondary materials, and issues related to the problem of double land certificates. This study consists of several stages, namely formulating research questions, searching for literature, determining inclusion and exclusion criteria, selecting literature, presenting data, processing data and drawing conclusions.

3. RESEARCH RESULTS AND DISCUSSION

One of the principles of a state based on law is the guarantee of legal certainty and legal protection where the rights of citizens must be protected and guaranteed by the State (Andrianto, 2020) . In this regard, 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 (Nur, 2023) . Conflicts related to land always take place continuously, because everyone must have interests related to land. The main factor causing land conflicts is the fixed land area, while the number of people who need land to meet their needs is always increasing. Orderly land administration is the target of efforts to obtain legal certainty and certainty of land rights and the UUPA has placed an obligation on the government to register land throughout Indonesia in addition to rights holders to register land rights in accordance with applicable provisions. Land registration is very important for land rights holders, in order to ensure the legal certainty of the land rights in question, so that they can easily find out the status or legal position of the land. Land registration is intended to request the land office so that the land owned or controlled by a person or legal entity is recorded in the land office and the legitimate rights holder is given a land certificate.

Land issues have now developed through the nature and substance of land dispute cases which are no longer only through administrative law, but have also penetrated the political, social, cultural spheres and are related to issues of nationalism and human rights. The issuance of certificates as proof of ownership of land rights is intended to protect the interests of parties who have rights to the land, but along with its growth, land registration of parties who feel disadvantaged by errors in land registration is also increasing. Article 1 paragraph (2) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency. Number 11 of 2016 concerning the Settlement of Land Cases ("Permen Agraria 11/2016") explains that what is meant by land disputes is land disputes between individuals, legal entities, or institutions that do not have a broad impact.

Double certificates are one of the disputes that often arise, in short, it can be interpreted as certificates that describe the same plot of land, or a broad understanding of a double certificate is a certificate of ownership of documents (*double*) issued by the BPN which results in overlapping rights of residence between one part and another part of the land, so that a double certificate is issued which has an impact on the residence of the land as a whole or part of the land owned by someone else (Nurmala & Alfiany, 2024) . The occurrence of double certificates can result in legal uncertainty for holders of land rights (Antari et al., 2023) . Double certificates often occur in society which results in certificate

holders accusing each other that what they have is true even though later one of the certificates is fake. This causes many problems so that sometimes there are certificates where the object stated in the certificate is not what it should be but land belonging to someone else which is made a letter by irresponsible persons or there is negligence in issuing the letter.

Duplicate certificates occur because the certificates are not mapped on the land registration map of the area's situation. If a land registration map or situation map is made at each land office, and/or a picture of the situation, a measurement letter is made on the map, then the possibility of a duplicate certificate is very small. However, if a duplicate certificate occurs, there must be a cancellation from one of the parties by checking the supporting documents. The tendency for duplicate certificates to arise is due to the mapping and computerization system in the old order era which was less modern which resulted in duplicate certificates and the dishonesty of village/sub-district officials is also a factor in the emergence of duplicate certificates. However, it is also inseparable from the actions of the land office officials themselves, such as canceling an old certificate and issuing a new certificate for and in the name of another person without the knowledge of the owner whose name is listed on the old certificate. According to the BPN, duplicate certificates generally occur on land that is still empty or has no buildings on it. The emergence of duplicate certificates is caused by several things as follows (Rafi & Lukman, 2023) :

- (1) During field survey measurements, the applicant intentionally or unintentionally indicated the wrong land position and land boundaries.
- (2) There is evidence or acknowledgment of rights that is proven to be untrue, false or out of date.
- (3) Some areas do not yet have a registration map.

The legal consequences of having a double certificate are that it does not provide legal certainty, because the purpose of someone registering land is to obtain a certificate as a perfect means of proof (Ayuningtyas et al., 2020) . However, with the emergence of a double certificate, it creates legal uncertainty in terms of land registration. It is said that it does not provide legal certainty because there are no two legal statuses on one land. The existence of a double certificate can cause public distrust of the legal certainty of land rights in this case distrust of the certificate (Sulistiyawan, 2019) . Because the land title certificate should be a strong proof of ownership of land rights, but how can it be said to be strong if there are two certificates with the same land object, which one is considered strong that can guarantee the legal certainty of land rights? The next impact is a loss, meaning that someone expects to get legal status for their land but because of the existence of a duplicate certificate and then being declared the loser in court with the consequence that the certificate is declared void, automatically the person experiences a loss because no matter what, in the land registration process, costs are incurred, especially if the land is large and most likely a business or place to earn a living will be built on the land. Not to mention the court costs that must be paid by the Defendant as the losing party in court. In addition, it is said to cause losses because the land in dispute will be very difficult to sell and even if it can, the selling price of the land will be low, especially considering that in the previous case the Plaintiff intended to sell the land but from the results of the re-measurement of the location, the Plaintiff was shocked that based on the minutes it was discovered that on the Plaintiff's land rights there were certificates from other people. So, with the existence of the duplicate certificate, the Plaintiff feels disadvantaged because he cannot sell or transfer the land because the status of the land is currently in dispute.

Understanding the increasing land problems in terms of quality and quantity, serious and systematic handling is needed. Dispute resolution is generally carried out by the State

Administrative Court or District Court, but it must be seen from how the case occurs. If the cancellation is carried out through the State Administrative Court, there is a validity period for filing a lawsuit, which is 90 days from the date the Land Ownership Certificate was issued by the National Land Agency. The lawsuit is filed at the PTUN if the double certificate case occurs between an individual and an agency or an agency with an agency. Any person or agency may file a lawsuit if the Land Ownership Certificate overlaps. However, if the double certificate case occurs between individuals, the lawsuit should be filed with the District Court because it is related to ownership, the authority is transferred to civil law. Because the PTUN does not have the right to decide or try double certificate cases that occur between individuals. The resolution of double certificate disputes is carried out through mediation. Mediation is carried out by the BPN which is located at the BPN office and is handled by the dispute division. If there is no agreement between the two disputing parties, the case can be continued to the General Court or to the PTUN. After a decision is issued by the competent court, one of the certificates that is considered invalid is null and void and the BPN has the right to burn the certificate to the ground. From an interview conducted at the PTUN, the judge who was interviewed stated that on February 6-7, 2019 a large meeting was held in Jakarta, Ancol. The meeting discussed the existence of new regulations regarding changes to the ratification of certificate cancellations which were originally the authority of the PTUN, now the authority of the BPN. If the BPN is unable to resolve the validity of the data and letters, the settlement will then be transferred to the PTUN. This theory is called the *Contrarius Actus* principle, which means whoever issues it is the one who cancels it.

Several land dispute resolution efforts can also be carried out alternatively for land dispute resolution outside the court (non-litigation) such as through mediation, facilitation and other processes that facilitate problem resolution (Wijayanta, 2014) . According to Article 11 paragraph (3) of the Regulation of the Minister of Agrarian Affairs Number 11 of 2016 concerning the Settlement of Land Cases, it explains that disputes or conflicts that are the authority of the Ministry of Agrarian Affairs and Spatial Planning, one of which is dual land rights certificates. In addition, in the process of carrying out its duties to handle land disputes, the BPN makes efforts through mediation as an alternative dispute resolution method. The formation of the Deputy explains 2 (two) things, namely first, that the resolution of land problems is already a very important thing for the deputy to resolve it. Second, the belief that not all problems must be resolved in court.

4. CONCLUSION

The resolution of multiple land disputes must be carried out systematically by using law enforcement facilities and tools so that it will later make it easier for victims to resolve disputes in court. Even Some land dispute resolution efforts can also be done alternatively for land dispute resolution outside the court (non-litigation) such as through the mediation process. In this case, the BPN (National Land Agency) plays a role in the evidence process that will be carried out in the cancellation of one of the double land certificates, but on the other hand, if it is not proven, it will be continued through the court process .

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