



Issuance of certificate on land disputed

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Abstract

Pursuant to Pasal 30 paragraph (1) letter e of Government Regulation Number 24 of 1997 concerning Land Registration, if a land has disputed physical data or juridical data and is submitted to the Court and there is an order for status quo or a decision for confiscation from the Court, its recorded in the land book by leaving the names of the rights holders and noting in it any such confiscation or status quo order. However, in reality there are problems where the *Pertanahan Kota Banda Aceh* Office has issued certificates for land which are currently the object of dispute. The causes losses and legal uncertainty to the parties. This study aims to examine and analyze the status of disputed land that has been issued a certificate by the Land Office. This research is normative legal research using statutory approaches, conceptual approaches, and case approaches. Data was collected through literacy studies and surveys, then analyzed qualitatively. The results of the study show that the status of the disputed land which has been issued a certificate by the *Pertanahan Kota Banda Aceh* Office when referring to the Decision Number 22/Pdt.G/1990/PN.BNA then the company is the legal owner of the land, and the heirs of the shareholders who sell the land object is an illegal act.

Keywords: pertanahan office, land certificate, disputed land

Introduction

Land as an economic resource is an important requirement for the life of every human being, so that the people want to own and control rights over land as a whole. Land ownership and control rights are the starting point for land problems due to land conflicts/disputes between the community and the government, or between the communities and themselves, so it will be problems in the land sector. Undang-Undang Number 5 of 1960 concerning Basic Agrarian Regulations (hereinafter referred to as UUPA) is a statutory regulation that regulates land issues in Indonesia. UUPA puts the foundation for realizing legal certainty and legal protection for all Indonesian people. This can be seen from the provisions of pasal 19 paragraph (1) UUPA *juncto* pasal 3 letter a Government Regulation Number 24 of 1997 concerning Land Registration (hereinafter referred to as PP No. 24 of 1997) which states that "To provide certainty and legal protection to holders of a plot of land, an flats, and other registered rights so that one can easily prove himself as the holder of the said right".

Land registration will bring legal consequences in the form of a letter of evidence of land rights known as a land certificate to the holder of the land rights in question and is valid as a strong means of proof. As stated in pasal 32 PP No. 24 of 1997 that "A certificate is a proof of right that applies 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 in accordance with the data in the measurement letter and land title book concerned". The government agency tasked with administering land registration and which gives authority to manage land administration throughout the territory of the Republic of Indonesia is the National Land Agency (referred to as BPN) whose implementation task in the framework of implementing land registration is carried out by the Regency/Municipal *pertanahan* Office. Land registration activities are regulated in pasal 19 paragraph (2)

of the UUPA which is further elaborated in PP No. 24 of 1997, namely land registration activities for the first time and activities for maintaining land registration data. Based on PP No. 24 of 1997, for the first time land registration was carried out in 2 (two) ways, there are systematically and sporadically. Systematic land registration is the activity of land registration for the first time which is carried out simultaneously covering all registration objects that have not been registered in the area or part of the territory of a village/kelurahan. Systematic land registration is carried out at the initiative of the government based on a long-term and annual work plan and is carried out in areas determined by the State Minister for Agrarian Affairs or the Head of the Land Agency. While land registration is a land registration activity for the first time concerning one or several land registration objects in an area or part of a village or sub-district area individually or *en masse*. Sporadic land registration is carried out at the request of interested parties, namely parties entitled to the object of land registration in question or their own ways. In general, the procedures for land registration carried out sporadically are:

1. The land owner submits an application for land registration to the Head of the Regency/City Land Office;
2. Measurement of land that the surveyor wants to register from the Regency/Municipal Land Office;
3. Collection and research on juridical data on land and delimitation;
4. Announcement of physical data and juridical data, and their ratification;
5. Bookkeeping of rights;
6. Issuance of certificates is the final result of land registration activities; and
7. The head of the Regency/Municipal Land Office submits the certificate to the applicant for land registration.

Apart from being authorized to issue certificates of land rights, BPN is also authorized to resolve land disputes. This is in line with the provisions of pasal 3 of Presidential Regulation Number 48 of 2020 concerning the National Land Agency. In connection with the issuance of certificates of land rights, there was a case where initially a land object was used as capital in a company for share ownership owned by 5 people together with one of them having the highest equity participation than the others. However, later on, after the main capital owner with the highest value of equity participation among other investors died, the land object was controlled by the child of one of the capital owners who did not want to admit that the other four people were also capital owners, the controlling party considered all the object is the inheritance of his parents.

On this basis, 3 (three) out of 5 (five) other capital owners filed a lawsuit against the heirs who controlled the object and the court based on the decision of the Banda Aceh District Court Number 22/Pdt.G/1990/PN.BNA stated that the plaintiffs' lawsuit was granted, stating that the plaintiff was legitimate as the owner of the capital, stating that the object of the dispute legally belonged to the owners of the capital, stated that the collateral for the object of the dispute was legally confiscated. Against this decision, legal efforts continue to be carried out up to extraordinary legal remedies, where all decisions continue to uphold the decision at the first level which decides to be executed and divided among the shareholders according to their respective percentages.

Currently, when other capital owners are about to carry out the execution of the said court decision, the grandchildren of the heirs who control the land object, and other investors do not know the land have sold, the land object on the basis of determining the heirs at the Banda Aceh Syar'iyah Court in 2016 with Decision Number 0162/Pdt.P/2016/MS-BNA dated 17 November 2016, then followed by the buyer making a Letter of Assertion of Physical Control over Land Plots (Sporadic) at the village level in November 2016, then continued with the issuance of a certificate Keuchik Gampong Baru Number 470/571/2016 dated 02 December 2016 which was then followed by the making of the Sale and Purchase Deed (hereinafter referred to as AJB) at the Land Deed Making Officer (hereinafter referred to as PPAT) made by Husna, S.H., M.Kn. as the PPAT of the City of Banda Aceh and after the AJB was completed, the process of issuing a certificate for the first time was proposed for the object where at first the land had never been issued a certificate by the Pertanahan Office of Banda Aceh because it was still jointly owned by the investors.

Issuance of the certificate, one of the capital owners then submitted a request for cancellation of the certificate of land rights to the Banda Aceh State Administrative Court, but in Decision Number 18/G/2017/PTUN.BNA dated 29 November 2017 the plaintiff's request was rejected on the grounds that the plaintiff not the authorized party. If referring to the provisions of pasal 30 paragraph (1) letter e PP No. 24 of 1997 states that "those whose physical data or juridical data are disputed and submitted to the Court and there is an order for the status quo or a confiscation decision from the Court, are recorded in the land book by emptying the names of the rights holders and other disputed matters and recording in it any confiscation or order of the *status quo*".

Based on these provisions, a certificate cannot be issued for an object that is still in dispute status, but the opposite has happened, namely the certificate has been issued and handed over to a third party as the buyer of the disputed object because the Land Office did not examine it carefully. regarding the basic origin of the object land which is still in a dispute, this is very contrary to the applicable regulations.

Methods

This research is a normative juridical research and the approach used in this research uses statutory and conceptual approaches. Data collection was carried out through library research and supported by interviewing relevant sources.

Results and Discussion

1. Position of Land Rights Holders

Acknowledgment of ownership of an object, both fixed and movable objects, is important. often the recognition of an object also raises disputes that end up in court. One of the most common ownership disputes is land ownership disputes. In land rights disputes, it is usually accompanied by an acknowledgment from each party of ownership of a land accompanied by evidence brought by each party.

There are several land rights described in pasal 16 ayat (1) of the UUPA, including ownership rights, usufructuary rights, building use rights, usufructuary rights, rental rights, land clearing rights, and rights to collect forest products. Where from some of these rights there are often disputes over rights between one party and another party who also feels they have rights over the land. Based on the land dispute case contained in Decision Number 22/Pdt.G/1990/PN.BNA, each party acknowledges that the land is legally owned. The plaintiffs acknowledged that the land was company capital provided by one of the shareholders that is Almarhum Tgk. H. Bayan and he is a bond of company assets.

This has also been strengthened by a district court decision (judgment of 1987). Meanwhile, the heirs of the almarhum Tgk. H. Bayan said that the land did not belong to the company, they stated that the land was legally theirs as the heirs of the almarhum Tgk. H. Bayan. So that they have the right to control, take advantage of and sell it to third parties. Because they felt they were the rightful owners of the land, the heirs of the almarhum Tgk. H. Bayan, they sold the land to a third party as evidenced by the Deed of Sale and Purchase then the pertanahan kota Banda Aceh Office issued a certificate of land rights.

Has been analyzed using the theory of legal certainty, with a court decision stating that the land is legally owned by the company based on the evidence submitted to the court, the land is included as a boedel of assets and the owner of the capital has the right to receive a distribution according to their respective percentages -respectively. With this decision, it has brought legal certainty in the form of guarantees for capital owners regarding their rights in the distribution of company assets and based on the court decision the company is also considered the legal owner of the land and building. On the other hand, third parties as buyers of the land and buildings also feel they are the legal owners of the land and buildings. This is because ownership of the land can be proven by a certificate issued by the pertanahan kota Banda Aceh Office. A certificate of land rights is a valid proof as proof of someone's ownership which provides legal certainty to the holder of the certificate

and also the holder of the certificate of land rights in this case is a buyer who can be said to have good intentions because his process of obtaining said ownership has gone through a procedure that should be taken.

seen from different views, each party is a legitimate party as the owner of the land and building. The owners of the ownership capital are proven by several pieces of evidence stating that the land and buildings have been included as company capital which is then strengthened by a court decision stating that the land and buildings are legally owned by the company. Meanwhile, if viewed from the side of the certificate owner is also the legal owner. Because the ownership of the land and buildings was obtained according to the proper procedures and a certificate of title on behalf of the buyer had been issued by the pertanahan kota Banda Aceh Office. However, if it is discussed again based on a court decision, the company is the legal owner of the land. So the action of the heirs to sell the land object is an unlawful act. Buying and selling is a legal act that requires an agreement therein. In this case the seller sets the price and promises to deliver the agreed object and the buyer agrees to buy and pay the agreed price. Referring to pasal 1320 of the Data Criminal Code, the seller has violated the legal terms of the agreement in buying and selling.

If measured using the terms of the legality of an agreement as contained in pasal 1320 of the KUHPperdata, then actually the heirs of the almarhum Tgk. H. Bayan as a seller has violated 2 (two) elements of the provisions of pasal 1320 of the KUHPperdata related to legal skills and causes. In terms of skills, the parties who carry out the sale and purchase of land and buildings are classified as people who are said to be incompetent. This is because, basically, the seller has no right to sell the object. Based on the court decision it is clear that the land and building objects have been legally declared as the property of the company, so that it can be said that the seller is a person who is not authorized to sell the land and building.

Regarding a lawful cause in this sale and purchase agreement is also not fulfilled. This is because the sale and purchase occurred after the issuance of a court decision stating that the object of sale and purchase in the form of land and buildings is legally owned by the company. This means that the heirs of the almarhum Tgk. H. Bayan as the seller already knows that the status of the land is not theirs, but the company's. However, the seller still carries out the act of buying and selling regardless of the status of the land and also the court decision that has been issued.

Based on the description above, the seller has violated the subjective and objective conditions in an agreement. Where violations of these conditions certainly have legal consequences. Because the legal terms of the agreement have been violated, it can be said that the deed of sale and purchase made as the basis for the transfer of rights and changes to data at the Land Office becomes invalid, which automatically means that the evidentiary power of the certificate that has been issued also should not have strong evidentiary power. As stated in pasal 1 number (4) of Government Regulation of the Republic of Indonesia Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning Regulations for the Position of Officials Making Land Deeds (hereinafter referred to as PP No. 24 of 2016) which states that " PPAT deed is a deed drawn up by the PPAT as

evidence that certain legal actions have been carried out regarding land rights or ownership rights to flats".

As a basis for making the deed, the PPAT certainly asks the parties to include the relevant documents for making the deed of sale and purchase. If one of the required documents is missing, or the data provided by the parties to the PPAT is incorrect data, it can result in the deed of sale and purchase that has been made degraded. Pasal 37 ayat (1) PP No. 24 of 1997 states that the deed drawn up by the authorized PPAT is the basis for the transfer of rights to land and ownership rights to flats through buying and selling, swaps, grants, income in companies and other legal acts of transferring rights. On the basis of the deed of sale and purchase that has been degraded, it can be said that the certificate issued is invalid due to an error in the process of issuing the certificate for the land and building.

Apart from that, legally the status of the object on the land and the building itself is actually still part of the common property. According to Ria Fitri, a lecturer at the Faculty of Law, University of Syiah Kuala, stated that the assets that have not been divided are still included in the boedel assets, so that the assets that are still in the form of boedel assets cannot be transferred directly, they must be divided first among the heirs. Both the owners of the company's capital and the heirs of the almarhum Tgk. H. Bayan actually could not immediately sell the object. According to the rules, the portion of land and building objects must first be determined, then each share will be distributed. After the existence of each part then the parties can control their respective parts.

2. Status of the Disputed Land for which the Certificate Has Been Issued

As a legal guarantee provided by the government for land, the government provides a letter of proof of rights called a certificate and is valid as a strong means of proof. This means that the information contained therein has the force of law and must be accepted by the judge as true information as long as there are no other means of proof proving otherwise. In connection with the issuance of this certificate, legally it can only be done with a deed drawn up before the PPAT as emphasized in pasal 37 ayat (1) PP No. 24 of 1997.

In addition, pasal 39 ayat (1) letter f PP No. 24 of 1997 also states that a PPAT may refuse to make a deed, if the object of the legal action in question is in dispute regarding its physical data and/or juridical data. There are 2 (two) conditions for buying and selling land, namely material conditions and formal conditions. Material requirements will determine the legitimacy of buying and selling land. The material requirements are:

- a. The buyer has the right to buy the land in question, where the buyer as the recipient of the right must meet the requirements to own the land he will buy, whether or not the buyer is entitled to receive the said right can be seen from the type of land rights he buys because there are differences between buyers who are Indonesian citizens and buyers who are foreign nationality;
- b. The seller has the right to legally sell the land in question; and
- c. legal owner of the land may be traded and the land not in dispute.

Basically, the PPAT is not authorized to check the juridical correctness of the documents brought by the appearer. However, in this case, based on Pasal 39 PP. 24 of 1997, it is also implied that the PPAT has the right to know whether the land is clear of disputes or is still in dispute, if the status is disputed land, the PPAT is obliged to refuse the making of the deed of transfer of rights over the land. disputes over a land object, while waiting for a court decision until a decision has permanent legal force, the Land Office is prohibited from making transfers of the land in question. This is intended to avoid losses for the litigants and third parties. This is also regulated in pasal 30 ayat (1) letter e PP No. 24 of 1997 which states that "those whose physical data or juridical data are disputed and submitted to the Court and there is an order for the status quo or a confiscation decision from the Court, are recorded in the land book by emptying the name of the right holder and other disputed matters and recording in it existence of confiscation or order of the *status quo*".

Pasal 30 ayat (1) letter e PP No. 24 of 1997 also states that if the dispute has been submitted to the court and there is an order for the *status quo* or there is a decision regarding the confiscation of the land, then the inclusion of the name of the right holder in the land book is suspended until it is clear who has the right to the land, either through court decisions or based on peaceful means.

The status quo order referred to here must be official and written and after the trial the examination of the lawsuit in question is underway is strengthened by a decision on the confiscation of the land in question. So in this case it is clear that for objects over land and buildings that still have disputes over them, the transition must be postponed. This is because land and building objects that are still in dispute do not have legal certainty regarding their ownership status and who is the legal owner of the object itself. So that if the object is still transferred it will cause injustice and legal uncertainty for the actual rights holder over the object as well as for third parties.

Based on the theory of legal certainty, the purpose of establishing law is to achieve justice. In this case, if a certificate of land rights that is still in dispute is still issued, then the certificate will not only provide justice for the real owner, but also does not provide legal certainty for the party whose name is stated in the certificate, because there is no definite legal guarantee for him regarding objects on land and buildings that are still in dispute.

expenditure a letter/certificate from the Land Agency or the PPAT's actions making the Deed of Sale and Purchase of the object that is still in dispute can be said to be an unlawful act. Because it is clear that any transfer of a land right must be supported by physical and juridical data related to the object to be transferred. Based on the rule of law, before issuing a certificate, the Land Office is obliged to first examine the physical and juridical data of the object, one of which is to find out whether there is a dispute on the land. If a certificate is still issued on the land which is proven to still have a dispute over it, then it is possible that there has been an administrative flaw in the process of issuing the certificate.

As in the case of a land dispute that occurred between the heirs of the almarhum Tgk. H. Bayan with the capital owner related to the ownership of the land and building object. There has been a court decision and collateral confiscation of the object. However, the heirs of the almarhum Tgk. H.

Bayan continued to sell the land and the Land Office also issued a certificate on behalf of the buyer. So in this case it should be suspected that there was a legal flaw or maladministration in the process of issuing the certificate. Because it is clear legally that the status of land rights that are still in dispute must be suspended in relation to the name of the owner until the dispute is resolved either through peaceful means or through a court decision.

Conclusion

The status of the disputed land for which the land certificate has been issued by the Land Office and according to Decision Number 22/Pdt.G/1990/PN.BNA, the company is the legal owner of the land which is the object of the dispute, because the land is the company's capital. So the action of the heirs of the shareholders to sell the land object is an unlawful. It is suggested to the government to establish a regulation obliging the District Court to submit decisions relating to land to the National Land Agency as the authorized agency in terms of issuance and cancellation of certificates.

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