



Legal settlement of disputes over dual certificates of use rights among the community

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Abstract

Disputes over duplicate certificates of use rights are still rife in several regions in Indonesia, causing land certificate holders to point fingers at each other. One of their certificates, a duplicate, is fake. If the object indicated on the certificate is not real, then to obtain legal certainty over the land use right certificate, one of the dual certificate holders files a complaint with the Land Office, which is the authorized official in that field. The research method used is normative legal research (doctrinal research). The purpose of normative legal research is to examine positive legal norms and use positive legal documents studied normatively as legal material. As for the double certificate case, it can actually be done through mediation efforts, because land disputes related to double certificate cases are included in civil law. While mediation efforts can be made for double certificate cases because this case is different from falsification of government documents. However, if mediation does not reach a solution then the parties can use legal remedies, disputes related to double certification can be resolved at the ATR / BPN Office. The process of resolving a land dispute case, in this case due to a dual certificate dispute, can be through litigation or non-litigation.

Keywords: Dual certificate, use right, legal settlement

Introduction

For the Indonesian nation, which is an agrarian or archipelagic country, land is an element that is very important for the life and livelihood of the community, land clearly has an important role in everyone's life. For the state and development, land is the main capital for organizing state life and achieving the greatest welfare of the people. Thanks to this status, legal protection is guaranteed by the state over the ownership, use and utilization of land. Land is an essential human right for a society of dignity and opportunity. In addition, it is the responsibility of the state to guarantee legal guarantees of freedom over land, even though this right is still limited by the interests of various parties, regions, and governments. All human life activities are carried out on land, so land is a place to live that provides a source of life for the community. This is reflected in the Constitution of the Republic of Indonesia Article 33 paragraph 3 which reads "The land and water and the natural resources contained therein shall be controlled by the state and shall be used to the greatest extent for the prosperity of the people". Then with the birth of the Basic Agrarian Law, the purpose of granting land rights became clearer.

Land issues are problems that affect people's basic rights ^[1]. Because it is still a human environment in civilization, there is still a high possibility of conflict between people and groups in a certain population ^[2]. Avoiding conflict is difficult. Society's efforts to maintain recognition while protecting interests involve confrontation, conflict and debate. Disputes arise because of conflicting interests. This situation can lead to serious events involving the relationship between humans and the earth and the relationship between humans and objects on earth ^[3].

The Unitary State of the Republic of Indonesia (NKRI) is a state of law that is oriented towards public welfare as stated in the 1945 Constitution, so it cannot be separated from land law disputes which are the main problem of Indonesia.

society and especially people in the rural sector. Citizens always want to protect their rights, while on the other hand the government must also care about the general welfare of all Indonesian citizens. Legal protection is needed to realize the interests of society. This can be done if there are rules or regulations that the community complies with. Land rights are basic rights that are very important for the community in terms of human dignity and freedom. On the other hand, it is the responsibility of the state to ensure legal certainty regarding land rights, although these rights remain limited by the interests of other people, society and especially the state ^[4].

The Unitary State of the Republic of Indonesia (NKRI) is a country based on the rule of law, guided by the public interest as stated in the 1945 Constitution, therefore it cannot be separated from land issues which are fundamental problems for its citizens, especially in Indonesia. The protection of common interests requires legal protection. This can be achieved if there are rules and regulations that citizens comply with. Problems always arise in marital disputes and it is interesting to discuss how to resolve them. Land disputes often occur at all levels of society. The emergence of land disputes is often caused by population growth, development and the ability of various parties to acquire land as a basis for concessions. Land disputes are a problem that increases every year due to the complexity, scale and changes in society. In the early days, when society was less developed than it is today, disputes were settled by citizens and influential people in society. Land disputes have become a major problem as society evolves, and their existence will only exacerbate the problem once it is resolved. To address these problems, the government issued the Basic Agricultural Regulation or UUPA No. 5 of 1960 to create legislation for the rural sector. In the territory of the Unitary State of the Republic of Indonesia, UUPA stipulates a series of land regulations that aim to create legal certainty throughout the region.

Disputes regarding the status, priority and ownership of land become the starting point for a legal process that aims to obtain administrative settlements in accordance with applicable regulations^[5].

Looking at the process of making and issuing land title certificates, it is unlikely that duplicate title certificates will be issued. In fact, such duplicate certificates still exist. A duplicate certificate is a certificate issued more than one certificate, in whole or in part due to duplication. According to Sudarwanto, there are 2 (two) factors that cause duplicate certificates, namely internal and external factors. Internal factors include not mapping the fields on the registration and measurement map without regard to the principle of conflict demarcation by the officer. External factors include manipulation of information by village officials, rejection of land by certificate holders and low public awareness of the principle of conflict^[6].

A piece of land with two certificates can lead to legal uncertainty for land rights holders, something that is certainly not expected in the Indonesian Land Registry. Duplicate certification usually occurs on land that is still vacant or undeveloped. The emergence of duplicate certificates is caused by several factors. The causes are people working inside or outside the Land Agency office, or duplicate or overlapping documents, and because the owner leases the land for too long, so the tenant files a complaint against the land, which proves to be fake. There are several such certificates, which create vulnerabilities. The double certificate is a piece of land that has more than one certificate with the same object. Certificate forgery occurs because it is not based on the correct authority. For example, issuance of certificates based on falsified title documents, other forms (e.g. BPN stamps) and falsification of state records. The existence of administrative law deficiencies naturally leads to duplication of evidence, because the evidence is not mapped in the real estate register of the region or in the state map^[7].

Regarding land registration, it is further stated in Article 1 of Government Regulation No. 24/1997, which is a series of activities carried out by the government continuously, permanently and regularly, including collection, processing, accounting and presentation and maintenance. Physical and legal information in the form of maps and lists of lots and housing units, including the issuance of property rights over lots that already have land rights and property rights and certain rights that burden them. According to Harsono, land registration is an activity carried out continuously and regularly by the state or government, in which certain information or information about land in a certain area is collected, managed, preserved, and presented for the benefit of the people and to ensure legal certainty in the rural sector, including the provision and preservation of evidence^[8].

The provisions of Article 19 paragraph (1) of the UUPA are regulations intended for the government in organizing land registration throughout Indonesia, and at the same time become the legal basis for land registration to obtain valid land rights certificates as strong evidence. The process of achieving national goals requires a national land policy, one of which is the implementation of land registration whose purpose is to create legal certainty regarding the subject and object of land law^[9]. The real estate registration authorized by the state is the Land Agency whose implementation is delegated to the State Council/Municipal Land Agency. The

purpose of land registration is to ensure legal certainty and security of land rights^[10].

Disputes over duplicate certificates of use rights are still rife in several regions in Indonesia, causing land certificate holders to point fingers at each other. One of their certificates, a duplicate, is fake. If the object indicated on the certificate is not real, then in order to obtain legal certainty over the certificate of right of use over the land, one of the owners of the duplicate certificate lodges a complaint with the Land Office, which is the competent authority in the field of land. The parties may settle the dual certification directly out of court through negotiation or mediation, with or without a mediator. If no agreement is reached, then a lawsuit can be filed through a lawsuit^[11]. Based on the description above, the author is very interested in researching the problem, so a research paper entitled "Legal Settlement Due to Disputes over Dual Certificates of Use Rights among the Community" is made in this journal.

Research Method

The research method used is normative legal research (doctrinal research). The purpose of normative legal research is to examine positive legal norms and use positive legal documents that are studied normatively as legal materials. This research uses a type of normative legal research, which uses the following approach: This research uses a legal approach, which is an approach that examines and analyzes laws and regulations in the land sector. Then, this work is related to the analysis of legal provisions and understanding of problems and appropriate solutions based on the principles of guidance and regulations originating from the law. Secondly, researchers also use a conceptual approach, namely concepts related to the existing land management exceptions^[12]. This research is a normative legal research in which the researcher conducts an analysis to resolve disputes over dual certificate land ownership.

Result and Discussion

1. Land Rights Ownership Arrangements

Land ownership in Indonesia is based on the regulatory system of the Basic Agrarian Law Number 5 of 1960 which has undergone changes, whereas prior to this law, the regulatory system for land rights was based on the Civil Code. According to the rights of Egedom Erpacht Opstal etc., these rights have disappeared since the enactment of Law Number 5 of 1960 (UUPA). Land ownership is a very important level of welfare for a family or community, because land can be used as family capital and can also be used as savings capital at the Bank. One of the efforts to realize the goal of the greatest prosperity of the State is the enactment of the Basic Agrarian Regulation Law Number 5 of 1960 (Basic Agrarian Law, hereinafter abbreviated as UUPA). Thus, Law Number 5 of September 24, 1960 on Basic Agrarian Regulations is the implementation of Article 33 paragraph (3) of the 1945 Constitution.

Basic Agrarian Law No. 5/1960 aims to reform the system of land ownership throughout the country based on customary law on the land. With the enactment of this Act, uniformity in land law was achieved, so that in addition to land rights according to common law, there are no more land rights according to Western law. Book II of the Civil Code (Burgerlijk Wetboek) is hereby repealed insofar as it relates to land, water and natural resources contained therein, except for the provisions on mortgages which shall

apply from the date of promulgation. The provisions of this Act thus, there is no longer a dualism of state law, namely Western law and customary law, because Indonesian state law has been harmonized. Thus, B.W. has several regulations or articles governing substantive rights to land and the new Law creates the following land rights^[13]

- a. Property right;
- b. Right to cultivate;
- c. Building use right;
- d. Right of use;
- e. Right of lease.

Land in the form of real estate has the highest real estate value and is used by various groups as investment land for economic gain. The need for land for residential and commercial purposes is increasing. As the need for land increases, the need to ensure the rule of law in the land sector automatically increases. Legal certainty in this case comes from the availability of written legal documents, one of which is a certificate of ownership. The land sector has a land registration system that allows landowners to demonstrate their rights to the land they control^[14]. Land rights give the right to use certain land and housing to fulfill certain needs. Right of use is the right to manage, use and benefit from a piece of land. If the land is used, there is an obligation to preserve the land and prevent damage to the land (Basic Agrarian Law). The use of the land must be adjusted to the purpose of granting land rights, the content of the rights, and the use stipulated in the autonomous region plan implemented in the area concerned.

The concept of hak milik according to Basic Agrarian Law 20 paragraph (1) is hereditary, the strongest and most complete right that a person can have over land, taking into account the provisions of Article 6. Right, because the owner of the right can transfer the right of ownership to his heirs. Hak milik as the strongest right means that the right cannot be eliminated easily and is easily protected from interference from other parties. Full means that property rights provide the broadest authority compared to other rights. Ownership rights can be transferred and assigned to other parties. The UUPA has regulated who is entitled to property as referred to in Article 21 paragraph 1 of the UUPA, namely: a. Only Indonesian citizens can own such property and, b. However, paragraph 2 of this provision allows certain legal entities to acquire property. Some legal entities that may have property rights are state-owned banks or religious and social institutions.

Foreigners or persons with dual nationality (non-permanent residents and foreigners) cannot acquire land titles. Foreigners or persons of dual nationality who acquire property rights through testamentary inheritance and conjugal property must relinquish those rights within one year of acquiring the property rights. If that period passes and no title exists, the title is revoked by operation of law and the land reverts to the government, subject to the rights of other parties still occupying the land.

While the provisions of the concept of hak pakai are explained in Article 41 paragraph (1) of the UUPA which states that Hak Pakai has the right to use land controlled by the state or owned by others and receive income from it, which gives powers and obligations to the state as specified in the decision to grant it. The authorized agency issues it or a lease or land management agreement, as long as it is not contrary to the Law. Permits can be held by Indonesian

citizens and foreign citizens, including legal entities established under Indonesian law and domiciled in Indonesia, which also applies to foreign legal entities. The right of use is regulated in Article 39 of Government Regulation No. 40/1996.

2. Legal Settlement of Dual Certificate of Use Disputes

Registration of community-owned land is one of the duties or mandates of the community to avoid or minimize cases of multiple certificates in Indonesia. The purpose of land registration in Indonesia is to ensure legal certainty (rechts cadastral) land rights and legal protection of land ownership. Because the owner of a plot of land receives as proof of ownership information about its ownership that is guaranteed legal certainty. Documents of ownership rights, called land certificates in Government Regulation No. 10/1961 and Government Regulation No. 24/1997, have strong evidentiary value based on UUPA (Article 19 (2) (c)). This means that the evidentiary power of proof is not absolute, but rather strong, that is, as long as the physical and legal information is in accordance with the land recording and measurement certificate, it is considered correct information, unless otherwise proven in court. Therefore, land certificates can still be amended in Indonesia if there are legal and/or administrative deficiencies in their issuance. This choice was made to provide legal protection to people who acquire/own land in good faith.

As for the double certificate case, it can actually be done through mediation efforts, because land disputes related to double certificate cases are included in civil law. While mediation efforts can be made for dual certificate cases because this case is different from falsification of government documents. However, if mediation does not reach a solution then the parties can use legal remedies, disputes related to dual certification can be resolved at the Office of the Ministry of Agrarian and Spatial Planning / National Land Agency (ATR / BPN), this is formulated in Article 1 paragraph 5 of the Regulation of the Minister of ATR / Head of BPN submitted by parties who feel they have violated the legal products of the Ministry of Agriculture and Regional Planning / Land Agency, Land Agency according to their authority or feel they have violated the control and / or ownership of other parties. The specific steps for dispute resolution are based on Article 6 paragraph (1) of the Regulation of the Minister of ATR/BPN which goes through several steps as follows:

- a. Case assessment;
- b. Initial title;
- c. Research;
- d. Exposure of research results;
- e. Coordination meeting;
- f. Final degree;
- g. Case settlement.

Multiple certificates can be canceled because Government Regulation No. 24 of 1997 introduced a negative disclosure system in real estate registration. As explained earlier, Land Title Certificates are strong evidence under Article 19(1) (c), Article 23(2), Article 32(2) and Article 38(2) of the Basic Agrarian Law. The certificate is only strong evidence and not absolute evidence. This means that the information contained therein contains legal force and must be accepted as true until proven otherwise^[15].

In practice, multiple certificate disputes are not only resolved by BPN, but can also be resolved through the general court and state administrative court (PTUN). In land disputes, the General Court focuses more on civil and criminal cases, in contrast to the PTUN which resolves land disputes based on regulations issued by the BPN or other land-related authorities ^[16]. Dispute resolution, including land disputes, is regulated in Judiciary Law Number 4 of 2004. Article 1 of the Law states that jurisdiction is the right of an independent state to administer the law in order to uphold law and justice. Under current regulations, property rights disputes are referred to the general courts, disputes over Land Agency decisions are referred to the state administrative courts, and waqf land disputes are referred to the religious courts. The case of canceling several PTUN certificates is a land case involving administrative land affairs. Land issues refer to administrative problems, such as mismanagement in land registration, where procedures are followed before a certificate is issued, resulting in two certificates. The same applies to dual certification when one country has two certifications. Such cases are resolved by the State Administrative Court (PTUN) ^[17].

The purpose of the evidence submitted by the other party in the case is to provide legally valid evidence to the judge to make a decision, with an emphasis on establishing the truth of the disputed legal facts ^[18]. The law of presenting evidence in prosecution is an important part of processing a case. Proof of multiple land disputes through the authority of the Land Agency usually begins with complaints from the public that the certified land they own is also owned by other people/parties who hold land rights certificates for the same object. The procedural mechanism is carried out in the following stages: 1) Complaints, usually containing facts and events that prove that the applicant/plaintiff has land rights by adding evidence and, 2) Investigation, in its processing, the investigation is carried out by collecting administrative information and the results of field physical data research. Based on the results of the research, it can be concluded temporarily whether the complaint of the party/parties can be justified for further processing or not ^[19].

Conclusion

Multiple land use certificate disputes arise because the land ownership system in Indonesia is still controversial. There are still many Indonesians who find it difficult to deal with this issue properly. Most people believe that this problem can only be solved with money. The quick way is done in such a way that the more money spent, the faster the settlement. But actually the method used is wrong. Provisions regarding the settlement of disputes over dual certificates of right of use are regulated in Government Regulation No. 24 of 1997, namely by re-registering the land according to the procedures. Dispute resolution of dual certificates of use rights can be done through two channels, namely through re-registration and review at the State Land Office in accordance with Government Regulation No. 23 of 1997. If no agreement is reached, the settlement will be carried out as a resolution of the dispute over dual certificates of land use rights in the PTUN trial, where the PTUN will decide which certificate will be revoked according to the process. The process of resolving a land dispute case, in this case due to a dual certificate dispute, can be through litigation or non-litigation.

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