



## The responsibility of the national land agency for curbing multiple certificates

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### Abstract

Land registration in Indonesia aims to provide legal certainty for holders of land rights, so that certificate holders have strong evidence of rights. But in fact there are still many problems in the issuance of land rights certificates, namely the problem of certificates with multiple ownership issued by the BPN, where one plot of land is controlled by two different owners. The research method used is a qualitative research method classified as field research, which is descriptive analysis sourced from primary data through interviews and secondary data by conducting library research in the form of regulations, books, and other scientific works. The formulation of the problem in this study is how the responsibility of the National Land Agency in the endorsement of multiple certificates. The results showed that the BPN issued a certificate as proof of rights to a plot of land but experienced defects in the ownership status section because there are two ownership certificates with the same land.

**Keywords:** Responsibility, national land agency, multiple certificates

### Introduction

Indonesia is a state of law where all aspects of people's lives are comprehensively regulated in legislation. <sup>[1]</sup> Regarding land issues, article 33 paragraph 3 of the 1945 Constitution states that: "the earth, water and natural resources contained therein shall be controlled by the state and utilised for the greatest prosperity of the people". The Constitution is the highest legal foundation that comprehensively regulates national regulations for the prosperity of the people. Although the law states that the earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people, it does not mean that citizens do not get ownership rights to land, especially since land is a basic need that is needed by all people. It's just that there are various needs that must be met by every citizen to obtain ownership rights to land, the government has regulated its own mechanism, namely the Basic Agrarian Law No. 5 of 1960. <sup>[2]</sup>

One of the important points regulated in the Basic Agrarian Law is related to the issue of land tenure rights or often called land rights. According to Aminuddin Salle, a person who has a land right is authorised to use or benefit from the land to which he is entitled. <sup>[3]</sup>

The Basic Agrarian Law itself defines land tenure rights as the right to authorise the use of the land in question as well as the body of the earth and water and the space above it, just as needed for the interests directly related to the use of the land within the limits according to the Law and higher regulations. <sup>[4]</sup> So, in granting rights or authority associated with the law is an interrelated thing, so that legal products in the form of written regulations contained in various

laws and regulations will provide a guarantee of legal certainty for one's rights, especially property rights to land.

Based on Article 23 paragraph 1 of Law Number 5 of 1960 concerning Basic Agrarian Principles, which explains that property rights, as well as their transfer, cancellation and encumbrance with other rights must be registered according to the provisions referred to in Article 19, namely to ensure legal certainty by the government, land registration is carried out throughout the territory of the Republic of

Indonesia according to the provisions regulated by Government Regulation.

Paragraph 2 reads that land registration includes a. measurement of land mapping and bookkeeping, b. registration of land rights and the transfer of such rights, c. provision of proof of rights, which shall serve as a strong instrument of proof. Paragraph 3 reads that land registration is organised by taking into account the state of the country and society, the needs of socio-economic traffic and the possibility of its implementation according to the considerations of the Minister of Agrarian Affairs. Paragraph 3 states that people who are unable to afford it are exempted from paying land registration fees.

Then 1 year after the birth of Law Number 5 of 1960 concerning Basic Agrarian Principles, Government Regulation Number 10 of 1961 concerning Land Registration was enacted, but after 36 years of enactment of this Government Regulation, there was only an improvement in Government Regulation Number 24 of 1997 concerning Land Registration in line with the progress of national development. Based on Article 2 of Government Regulation No. 24 of 1997, land registration is based on the principles of simple, safe, affordable, up-to-date and open. Meanwhile, the organiser of land registration is the National Land Agency as a non- departmental government agency in accordance with Article 5 of PP No. 24 of 1997.

With the enactment of this PP on Land Registration, it is hoped that the public will be more aware of the ownership of land rights according to the law for the sake of orderly land administration to guarantee the legal certainty of land rights holders. Furthermore, to obtain a land certificate, the applicant must register through two stages, namely processing and collecting physical data, then the certificate can be issued as proof of rights. Furthermore, to facilitate the processing of certificates with the steps above, it is regulated in Permen ATR / Head of the National Land Agency Number 6 of 2018, article 1 paragraph 2 concerning the Acceleration of Complete Systematic Land Registration (hereinafter referred to as PTSLS). <sup>[5]</sup> The contents of article 1 paragraph 2 concerning the Acceleration of Complete

Systematic Land Registration, explains that "Complete systematic land registration, hereinafter abbreviated as PTSL, is a land registration activity for the first time carried out simultaneously for all land registration objects throughout the territory of the Republic of Indonesia in one village / kelurahan area or other names of the same level, which includes the collection of physical data and juridical data regarding one or several land registration objects for the purposes of their registration". Complete systematic land registration, hereinafter abbreviated as PTSL, is an activity of collecting, recording, and presenting and maintaining physical data and juridical data carried out by the National Land Agency or regional offices in each province, district or city. Furthermore, Presidential Regulation of the Republic of Indonesia Number 86 of 2018 also explains that currently the government still needs to realise an equitable structure of control, ownership, use and utilisation of land. [6] Furthermore, sporadic land registration is a land registration activity for the first time regarding one or several land registration objects in the area or part of the area of a village / kelurahan individually or in bulk. The National Land Agency is a non-ministerial institution in charge of the land sector with its work units referred to as regional offices (kanwil), which are built in every province, district or city. The agency was formed based on the decree of the President of the Republic of Indonesia Number 26 of 1988 which was given the task of assisting the president in developing and managing land administration, as stated in Article 2 which reads: "The Land Agency is tasked with assisting the President in managing and developing land administration both based on the Basic Agrarian Law and other laws and regulations which include regulating the use, control and ownership of land, managing land rights, measuring and registering land and others related to land issues based on policies set by the President". Then regarding its duties and functions are regulated in article 3, including the following:

1. Formulate policies and plans for land tenure and use;
2. Formulate policies and plans for regulating land ownership with the principles that land has a social function as stipulated in the Basic Agrarian Law;
3. Carry out measurement and mapping and land registration in an effort to provide certainty of rights in the land sector;
4. Carry out the management of land rights in order to maintain orderly administration in the land sector;
5. Carry out research and development in the field of land as well as education and training of personnel required in the field of land administration;
6. Others as determined by the President. [7]

However, in the tasks and functions of the National Land Agency assigned in the Presidential Decree above, there is still no transparency in data collection and bookkeeping of data and information on land tenure and owners, resulting in confusion over a plot of land. Land ownership errors arise due to several factors, among others, namely:

1. Inaccurate and incomplete data;
2. Erroneous land data;
3. A land deal gone wrong; [8]

In general, the factors of land misrepresentation above result in various problems, such as in land registration, many

people register land on land that has been certified so that in a land parcel has two certificates (double certificate). [9]

The legal awareness of a society must be supported by its legal culture. Negligence, whether intentional or not, will certainly have an impact on the uncertainty of the status of ownership of land rights. So the socialisation of the National Land Agency as the organiser of land registration is expected to be more continuous and relentless, because the lack of information on the importance of land rights certificates will backfire in the settlement of land rights ownership dispute cases. In addition, most problems arise not from the holders of land rights accompanied by land certificates of the first owner, but there is unilateral recognition by other parties under the pretext that the landowner has given him either in the name of sale and purchase, grants, wills, gifts and even inheritance and others.

For some people, the words "grant", "will", "gift", "inheritance" and "sale and purchase" mean that ownership rights have automatically transferred to the recipient. Of course, this will become a problem if there are parties who dispute it and will lead to land disputes in court. The occurrence of overlapping property rights over a piece of land has often occurred from the past until now. The problem is certainly inseparable from the mistakes of the National Land Agency in managing data in the land book, as in the case above, where a plot of land whose proof of ownership is in the form of a certificate is disputed by two people.

### Research Method

This type of research uses empirical juridical, namely, research on the role of law enforcers in carrying out their functions, which discusses how the law works in society and customary gampong institutions. The data used are primary data and secondary data. Data collection techniques using interview techniques and reviewing documents and laws related to this research. Furthermore, the data is processed and analysed with qualitative descriptive analysis techniques. [10] Based on the background above, the problem formulation in this research focuses on the responsibility of the national land agency to curb dual certificates.

### Result and Discussion

#### Causes of Multiple Certificate Issuance

Basically, the issuance of certificates is given to those who are entitled, so that right holders can easily prove their land ownership, in practice, even though land registration has been carried out, disputes over land rights still often occur.

Currently, land problems occur frequently, requiring a solution with a comprehensive approach. The development through the nature and substance of land dispute cases is no longer only through administrative law, but the complexity of the land has spread to the realm of politics, social, cultural, and related to issues of nationalism and human rights. [11]

The cause of multiple certificates can be due to an element of disparity and due to administrative errors both internally and externally, such as: [12]

1. During field measurements or research, the applicant intentionally or unintentionally showed the wrong location and boundaries of the land,

2. The existence of evidence or acknowledgement of rights in hindsight is proven to be untrue, false or no longer valid,
3. There is no land registration map available for the area concerned, and
4. Cases of issuance of more than one certificate on a plot of land can also occur on inherited land. The background of the case is an inheritance dispute, namely by the owner before his death has been sold to another party without the knowledge of his children and has been issued a certificate in the name of the buyer, and then the heirs certified the same land, resulting in multiple certificates.

From the explanation above, it can be concluded that the cause of multiple certificates is due to the inaccurate administration of the National Land Agency, where a certified plot of land is not mapped on a land registration map or a map of the situation and location of the certified land, resulting in problems of overlapping rights to a plot of land in whole or in part.

### **Responsibility of the National Land Agency for Issuing Multiple Certificates**

Land title certificates are products of State Administrative Officials (TUN), then apply the provisions of state administration. For this legal action, a person as a State Administrative Officer may commit an unlawful act either by mistake or due to negligence in carrying out his legal obligations.

Settlement of land disputes is not only carried out by the National Land Agency/ATR but can also be resolved by the General Court and the State Administrative Court (PTUN). If the General Court focuses more on civil and criminal matters in land disputes, then it is different with the State Administrative Court, which resolves land disputes related to decisions issued by the National Land Agency or other regional officials related to land. <sup>[13]</sup>

The National Land Agency/ATR is directly responsible for all land issues related to the granting of rights and the granting of land certificates. Furthermore, the National Land Agency always seeks solutions to land disputes based on applicable laws and regulations by taking into account a sense of justice and respect for the rights and obligations of each party.

In multiple certificate disputes, the National Land Agency/ATR has the authority to negotiate, mediate and facilitate the parties to the dispute and initiate an agreement between the parties. The accountability mechanism in resolving the dispute is in accordance with the Regulation of the Minister of Agrarian 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. <sup>[14]</sup>

Furthermore, the National Land Agency/ATR has certain mechanisms in handling and resolving cases or disputes over multiple certificates, namely: <sup>[15]</sup>

1. Land disputes are usually recognised by the National Land Agency.
2. of the complaint,
3. Complaints are followed up by identifying the problem, the National Land Agency first ascertains whether the problem is the authority of the relevant institution or not,

4. If it is the authority of the National Land Agency, then the next step is to scrutinise the matter to establish the veracity of the complaint and determine whether the complaint has merit for further proceedings,
5. If the results of the research need to be followed up with an examination of physical administrative and juridical data, the head of the office can take steps to prevent mutation (*status quo*),
6. If the problem is strategic, it requires the formation of several work units, then the political, social and economic nature of the team involves institutions (DPR, DPRD, PEMDA), and
7. The field team will compile a research report to inform recommendations for problem solving.

At present, most land disputes in terms of multiple certificates are resolved through 3 (three) ways, namely: Firstly, direct settlement by the parties through out-of-court deliberations involving the Village Head/Lurah and the Customary Chief. Dispute resolution in the form of deliberation is not to determine ownership of land that can give rights or eliminate one's rights to the disputed land.

Second, settlement through arbitration and alternatives conducted by a person or several arbitrators (judges) appointed based on the agreement/agreement of the parties and it is agreed that the decision taken is binding and final. Third, dispute resolution through a judicial body. <sup>[16]</sup>

From the above explanation, it can be concluded that in the administration of government affairs in which there are elements of maladministration and harm to citizens, if there are criminal elements in the government, the responsibility and liability are borne by the person who commits criminal liability. If the maladministration is found to be unlawful, then a civil

lawsuit can be filed against the official. However, if no maladministration is found, even if there is a tort, then the payment of compensation becomes an institutional responsibility. The National Land Agency/ATR is responsible for a lawsuit in court related to a plot of land that has 2 (two) certificates, bringing legal uncertainty to the land rights holder and experiencing administrative legal defects in its issuance. The National Land Agency is responsible for the administration of payment for certificates that have been duplicated after going through the State Administrative Court (PTUN) to adjudicate it. It is also absolutely liable for *overlapping* land ownership as a result of the inadequacy of the land registration system.

### **Legal Effects of Issuing Multiple Certificates by the National Land Agency**

According to the Presidential Regulation of the Republic of Indonesia Number 17 of 2015 concerning the National Land Agency, article 1 explains that "The National Land Agency, hereinafter referred to as BPN, is a non-ministerial institution under and responsible to the president". While in article 2 it is stated that "BPN has the task of carrying out government duties in the field of land nationally, regionally and sectorally in accordance with statutory regulations". Furthermore, Article 37 paragraph (2) states that "The Land Office as intended can be formed more than 1 (one) Land Office in the Regency / City. By paying attention to these two articles, it can be said that the Land Office is a State Administrative Official (TUN). <sup>[17]</sup>

Land certificates are government actions that provide legal consequences, in the form of granting land rights, and are issued by state administrative officials. Thus, land certificates are also state administrative decisions that are the object of State Administrative Court (PTUN) disputes.<sup>[18]</sup> This is because in Law Number 5 of 1985 concerning State Administrative Courts, Article 1 states that "State Administrative Decisions are written determinations issued by State Administrative Bodies or Officials that contain State Administrative legal actions based on applicable laws and regulations, which are concrete, individual and final in nature that have civil legal consequences".

Regarding the responsibility of the National Land Agency in the issuance of a certificate as evidence for certainty of rights as described above, in practice it is not fully in accordance with a set of Islamic law, so there are still many disputes between the community and the community and the institution itself. This is not in accordance with the Basic Agrarian Law article 19 paragraph (2), Government Regulation article 1 paragraph (20), article 13 paragraph (3), which should be used as evidence of rights issued by the National Land Agency systematically in accordance with its duties and authority. But in fact, the existence of a certificate of a plot of land with multiple ownership does not provide legal guarantees for someone who has two certificates, meaning that the National Land Agency has not been effective in carrying out its duties and authorities based on what is outlined in the Law.

The legal consequences of the existence of dual certificates are that they do not provide legal certainty, because the purpose of someone doing land registration is to obtain a certificate as a perfect evidentiary tool. It is said not to provide legal certainty because there are no two legal statuses are on one parcel of land. With the double certificate can cause public distrust of the certificate. Because the certificate of land rights should be a strong proof of ownership of land rights, but how can it be said to be strong if there are two certificates that the same land object.<sup>[19]</sup>

The next impact is loss, meaning that someone expects a strong legal status against a plot of land in the form of a certificate, but because of the overlapping power which is then resolved through the court channel and declared defeated in the trial with the consequences in the form of a certificate declared null and void or can be cancelled by law. Land disputes occur between two parties and can be resolved in a family manner with the intermediary of the National Land Agency as a mediator and as a party responsible for land issues. In this settlement, it is expected to reach consensus and not harm one of the parties, because if the dispute is resolved through legal channels, it is certain that it will require more energy, time and material.<sup>[20]</sup>

### Conclusion

The National Land Agency (BPN) is absolutely responsible for overlapping ownership as a result of an inadequate land registration system, according to the Head of the National Land Agency Regulation No.3/2006 on the organisation and work procedures of the BPN. The Head of the National Land Agency is responsible for the certificates issued. The absolute responsibility system requires BPN to be responsible both in and out of court in the event of a lawsuit regarding land rights. Law No. 10/2006 on the National Land Agency explains that "the National Land Agency

carries out tasks in the field of land nationally, regionally and sectorally".

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