



Legal strength of property certificates to land issued by the national land agency

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Abstract

The certificate of ownership is a strong means of proof regarding physical data and juridical data issued by BPN. However, in practice, the existence of this certificate of ownership often creates disputes, for example, there are rights of other parties in the land that has been certified as evidenced by an underhand grant letter. This will certainly cause losses and legal uncertainty for the parties. This study aims to examine and analyze the legal strength of land title certificates issued by BPN. Property rights certificates are a strong means of proof regarding physical data and juridical data issued by the National Land Agency. However, in practice the existence of this Ownership Certificate often causes disputes, such as for example there are rights of other parties in the land that has been certified as evidenced by a letter of grant under the hand. This will certainly cause losses and legal uncertainty for the parties. This research is expected to provide an understanding of the legal force of land title certificates that have been issued by the National Land Agency. This research is a normative juridical research using a statutory approach and a conceptual approach. The results of the study indicate that the Certificate of Ownership Number 11337 has strong evidentiary power because it is used as evidence as long as it is not proven otherwise based on a court decision. This will certainly cause losses and legal uncertainty for the parties. This research is expected to provide an understanding of the legal force of land title certificates that have been issued by the National Land Agency. This research is a normative juridical research using a statutory approach and a conceptual approach. The results of the study indicate that the Certificate of Ownership Number 11337 has strong evidentiary power because it is used as evidence as long as it is not proven otherwise based on a court decision. This will certainly cause losses and legal uncertainty for the parties. This research is expected to provide an understanding of the legal force of land title certificates that have been issued by the National Land Agency. This research is a normative juridical research using a statutory approach and a conceptual approach. The results of the study indicate that the Certificate of Ownership Number 11337 has strong evidentiary power because it is used as evidence as long as it is not proven otherwise based on a court decision. This research is a normative juridical research using a statutory approach and a conceptual approach. The results of the study indicate that the Certificate of Ownership Number 11337 has strong evidentiary power because it is used as evidence as long as it is not proven otherwise based on a court decision. This research is a normative juridical research using a statutory approach and a conceptual approach. The results of the study indicate that the Certificate of Ownership Number 11337 has strong evidentiary power because it is used as evidence as long as it is not proven otherwise based on a court decision.

Keywords: power of law, certificate of land rights, national land agency

Introduction

Indonesia is a unified country consisting of many islands and has various natural potentials contained in it, both in the form of land, water, to space. The entire natural wealth is under the supervision and authority of the State to be controlled and used optimally and effectively by the State for the prosperity of its people. As mandated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) which reads: "Earth, water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people. ". Based on Article 33 paragraph (3) of the 1945 Constitution, it became the forerunner to the formation of a conception of the control of natural resources by the State in developing the State.

Land is one of the important elements for survival and to realize the welfare of the community as aspired to as stated in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (hereinafter referred to as UUPA) which is the legal basis regarding land. in Indonesia. Therefore, land has become a basic need for humans and often causes problems due to the increasing need for land or land as a result of the increasing number of population growth and inversely proportional to the availability of available land or vacant land.

The UUPA lays the foundation for realizing legal certainty and legal protection for all Indonesian people. This can be seen from the provisions of Article 19 paragraph (1) of the LoGA in conjunction with Article 3 letter a of Government Regulation Number 24 of 1997 concerning Land Registration (hereinafter referred to as PP Land Registration) which states that "To provide legal certainty and protection to holders of rights to a plot of land, an

apartment, and other registered rights so that he can easily prove himself as the holder of the right in question". Land registration will bring legal consequences in the form of a letter of proof of land rights which is referred to as a land certificate to the holder of the land rights in question and acts as a strong evidence.

Issuance of certificates of land rights issued by the National Land Agency (hereinafter referred to as BPN) in the form of a Certificate of Ownership (hereinafter referred to as SHM) which involves the applicant, adjoining land owners, village officials, and the relevant agencies to obtain an explanation regarding the documents. a letter as a basis for rights related to the certificate application, so that an explanation from the related party has the opportunity to result in a legally flawed certificate. Land rights certificates as evidence of letters have not been able to fulfill the wishes of the community, because in the process it often creates disputes in terms of determining who has the right to the land object.

The problem regarding the issuance of land rights certificates is that there is still legal uncertainty in protecting the object (land) and subject (individual/legal entity rights) of the land rights certificate. One example of a concrete case that occurs in the community is in the case of a parcel of land that has been certified but still other people's rights appear in the form of a grant letter under the hand. This problem started when SHM No. 11337 with an area of 2,376m² (two thousand three hundred seventy-six square meters) in the name of HS and EM issued by BPN in 2018 which AA and AM denied because they felt that HS and EM had no right to the land. The AA and AM parties stated that part of the land, which is an area of 1. 253m² (one thousand two hundred and fifty three square meters) belongs to their mother which was given by their parents based on a letter of grant. The grant letter was made in 2005 and this grant letter is a private letter that is only known and signed by the grantor, grantee and several other witnesses.

Over time, a housing estate will be built on the land by the developer or the builder. The first party who has the name on the certificate agrees to build housing in the form of a building agreement made in the form of an authentic deed. During the process of making a building agreement at one of the Notary's offices, AA and AM who hold the grant letter under their mother's hand asked the Notary to include the distribution of housing rights for them because they also have rights to the land. This causes it to be unclear who is the real rightful owner of the land, so that there is no legal certainty for the parties with an interest in the land.

When viewed from the requirements and procedures in the issuance of land rights certificates as contained in the UUPA and PP Land Registration, such conditions indicate that an error has occurred in the process of issuing the SHM, so that it does not meet the legal requirements for a certificate to be issued. The UUPA adopts a negative system so that the information contained in the certificate of right has strong evidentiary power and must be accepted by the judge as true information as long as and as long as there is no other means of proof that can prove otherwise. This is in line with the provisions of Article 32 of the PP on Land Registration which states that:

1. The certificate is a letter of proof of rights that is valid 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 contained in the letter of measurement and the book of land rights in question.
2. In the event that a parcel of land has been legally issued in the name of the person or legal entity that obtained the land in good faith and actually controls it, the other party who feels that he has rights to the land can no longer demand the exercise of that right if within 5 (five) years since the issuance of the certificate, he has not submitted a written objection to the certificate holder and the relevant Head of the Land Office or has not filed a lawsuit with the Court regarding the control of the land or the issuance of the certificate. Certificates as authentic evidence are very important in terms of the transfer of land rights.

The legal act of transferring rights aims to transfer land rights to other parties who meet the requirements as rights holders. Although the certificate is not the only evidence of land rights. It is still possible to prove a person's land rights with other evidence, for example a registration deed issued by the village government where the land is located.

Based on the description of the problem above, it shows that there has been a legal conflict regarding the SHM issued by BPN, but there are other parties who can prove that he is also entitled to part of the plot of land based on an underhand grant. So that the SHM issued by the BPN is indicated by a legal defect in its issuance and results in the absence of legal certainty for the certificate.

Research Methods

Study"this is a normative juridical research. Normative legal research is legal research conducted by examining library materials or secondary data. So the approach used in the research uses a statutory approach and a conceptual approach. Data collection techniques are carried out through library research activities. Data analysis in this study used qualitative data analysis. This research is analytical descriptive, the data that has been obtained from the results of this study are compiled and analyzed qualitatively, then the data is then described descriptively in order to obtain a picture that can be understood clearly and directed to answer the problems studied."

Results and Discussion

A. Nature of Certificate Evidence as Evidence of Rights

Land registration activities for the first time produce proof of rights in the form of certificates. The certificate of land rights as the final result of the land registration process contains physical data in the form of information on the location, boundaries, area of the land parcel, as well as the part of the building or building on it if deemed necessary, and juridical data in the form of information on the legal status of the registered land parcel, rights holders, the rights of other parties, as well as other rights that support them. The essence of a land title certificate is proof of title to a plot of land containing a copy of the land book containing physical data and juridical data, as well as a measuring document containing physical data.

The purpose of issuing a certificate in land registration activities is so that the right holder can easily prove that he is the holder of the right, get guaranteed legal certainty and legal protection. The certificate issued for the benefit of the right holder concerned is in accordance with the physical data and juridical data that have been registered in the land book. Certificates as proof of rights have 2 (two) kinds of evidence, namely certificates as proof of absolute rights and certificates as proof of strong rights.

B. Certificate as Evidence of Absolute Rights

In the positive publication system of land registration, everything that is listed in the land registration book and the letters of proof of rights issued is an absolute thing and is absolute evidence. The function of land registration in this publication system is to provide assurance that the name of a person registered in the public register cannot be disputed, even if that person is not the actual owner of the land in question.

Each registration of rights and transfer of rights in the positive publication system requires a very thorough and thorough examination before the person is registered as the owner in the public register, the registration officers play a very active role in addition to having sufficient equipment. According to the positive publication system, a land certificate given is valid as proof of absolute land rights, and is the only proof of land rights. The characteristics of land registration in the positive publication system are:

1. Land registration/registration of land rights guarantees perfectly that the name registered in the land book cannot be disputed and cannot be contested, even though he is not the owner who has the right to the land. Give absolute trust to the land book.
2. Land registrar officers of land title transfers in this system play a very active role. The officer/official investigates whether the transferred land rights can be registered or not. They investigate the identity of the parties, their powers and whether the required formalities have been complied with or not.
3. The legal relationship between the rights of the person whose name is registered in the land book and the previous title giver is severed since the right is registered.

As mentioned above, the positive publication system in land registration provides a very large legal guarantee to the registered party. This is an advantage of the positive publication system, but the positive publication system also has weaknesses, namely:

1. The active role of transfer officers takes a long time.
2. The owner who has the right can lose his rights outside of his actions and outside his fault (spoliatio).
3. What is the jurisdiction of the court is placed under administrative power. That is, in solving problems, everything that should be the authority of the court becomes the administrative authority.

This weakness occurs because the positive publication system is based on the principle of good faith, while the purpose of the good faith principle is to protect people who in good faith obtain a right from a person who is suspected to be the legal right holder of that right. Based on this principle, a person who acquires a right in good faith remains the legal right holder of that right, even though the person transferring the right is not the person entitled.

Boedi Harsono also argues that in a positive publication system, people who in good faith and with payment (the purchaser in good faith and for value) obtain rights from the person whose name is registered as the right holder in the register, obtains what is called an indefeasible title (rights that are not inviolable) by registering his name as the right holder in the register. Also if it is later proven that the registered right holder is not the actual right holder.

C. Certificate as a Strong Evidence of Rights

The negative publication system is the opposite of the positive system, in this negative publication system the principle of transfer of rights known as *nemo plus juris* applies, namely that a person has no right to surrender or transfer rights beyond what he has. This publication system protects the actual land rights holders from the actions of others who transfer their rights without the real rights holders knowing. In a negative publication system, it produces land registration products in the form of land rights certificates that are valid as strong evidence of rights, so that the possibility of registered rights holders lose their rights if there are other parties who can prove otherwise.

This negative publicity system shows the characteristic that what is stated in the land certificate is considered true until it can be proven to the contrary (not true) in court. The main feature of the negative publication system is that the registration of land rights does not guarantee that the person whose name is registered in the land book and listed in the certificate is the person who has the right to the land. In other words, the land book may change as long as the objecting party can prove that he is the real owner through a court decision that has permanent

(definite) legal force. In this publication system, the state does not guarantee the truth of the land data presented so that people absolutely cannot trust the truth of the data.

Another advantage of the negative system when viewed from the process of making proof of rights, where implementing officials are passive and what is sought is formal truth, including:

1. It is sufficient for the organizing agency to accept the information on the rights listed as they are, without in-depth research.
2. If an error occurs in the recording, based on the judge's decision, it can be corrected by the land registration officer. Thus the people who are entitled to remain protected.

Meanwhile, the characteristics of the negative publication system are in terms of the lack of proof of the resulting rights, which only provide protection to the rights holders (who are entitled), including:

1. The principle of *nemo plus juris* applies that a person who cannot act beyond the authority he has, whose name is listed on the proof of the right, is the holder of the right.
2. Other people may believe, may not believe the information.

To overcome or reduce the risk of possible loss of land rights, in countries that use a negative publicity system, each prospective buyer or potential right holder usually conducts research first on the land in question (title search) where the results are then insured with an insurance company (title insurance). With the implementation of the title insurance system, registered rights holders can be protected, while the party who wins the case in court will receive compensation payments by the insurance company.

Based on 2 (two) land registration publication systems in the world, namely the positive publication system and the negative publication system, Indonesia chooses not to be in one of these systems. Indonesia has its own land registration publication system. According to R. Suprpto, the land registration publication system used by Indonesia is a negative publication system with positive tendencies. This means that the registration of land rights is carried out based on positive data, the official entrusted with the task of carrying out the registration has the authority to test the truth of the data used as the basis for registering rights. Registration is a guarantee of legal certainty and a strong means of proof, but it can still be disputed, sued in court.

The same opinion was also expressed by Adrian Sutedi, that the national land law adheres to a negative publication system, but not a pure negative, but what is called a negative publication system which contains positive elements. This can be seen from the provisions of Article 19 paragraph (2) letter c of the UUPA, which states that "registration includes the provision of certificates of proof of rights, which act as strong evidence". Articles 23, 32 and 38 of the LoGA also state that "registration is a strong means of proof". Such a statement will not be contained in the land registration regulations with a pure negative publication system.

The definition of a certificate as a strong means of proof is that the physical and juridical data in accordance with the data contained in the land book and the relevant document must be considered as correct data unless proven otherwise by the court. So that as long as it cannot be proven otherwise, the physical data and juridical data contained therein must be accepted as correct data, both in carrying out daily legal actions, as well as in litigation in court, so that the data listed must really be in accordance with the relevant letter of measurement. because the data taken comes from the letter of measurement and the land book. This is further strengthened by the provisions of Article 32 of the PP on Land Registration which states that:

1. The certificate is a proof of right that applies as a strong proof of evidence regarding the physical data and juridical data contained therein, as long as the physical data and juridical data are in accordance with the data contained in the Letter of Measurement and Land Book of the rights concerned.
2. In the event that a land parcel has been legally issued in the name of the person or legal entity that acquired the land in good faith and actually controls it, the other party who feels that he has rights to the land can no longer demand the exercise of that right if within 5 (five) years since the issuance of the certificate, do not file a written objection to the certificate holder and the head of the land office concerned or do not file a lawsuit to the court regarding the control of the land or the issuance of the certificate.

The provisions of Article 32 of the PP on Land Registration are in the context of providing legal certainty in the land sector. So based on the provisions as described above, a certificate is a strong piece of evidence as long as no party can prove otherwise, especially if for 5 (five) years since the issuance of the certificate he has not sued/ filed a lawsuit to the court regarding the control of rights. on or issuance of the certificate.

D. Strength of Proving Certificate of Ownership to Land Issued by the National Land Agency

Based on the provisions of Article 19 of the UUPA, a certificate is a strong means of proof, so that anyone can question the truth of his land certificate and if he can prove the untruth of the land rights, the court can cancel it and the head of the BPN can order it. Land ownership contains 2 (two) aspects of proof so that the ownership can be said to be strong and perfect, namely:

1. Evidence of a letter in which there are 4 (four) main things that must be fulfilled in the issuance of a certificate of land rights, namely:
 - a. Legal status and basis. This is to find out and ascertain on what basis the land was obtained.
 - b. The identity of the right holder or what is known as subject certainty. To ascertain who the real right holder is and whether the person is really authorized to get the right to the land.

- c. Location and area of land object or object certainty. This is manifested in the form of a measuring letter or situation drawing to determine where the boundaries or location of the land are.
 - d. Issuance procedure as regulated in PP Land Registration.
2. Physical evidence that serves as a certainty that the person concerned actually physically controls the land and avoids two different tenure rights.

If seen in the case of issuance of SHM No. 11337 on behalf of HS and EM with an area of 2,376m² (two thousand three hundred seventy-six square meters) in 2018, the SHM was issued based on the Physical Declaration of Land (Sporadic) and Certificate of Heirs (SKHW) issued by the Head The village where the land is located. So it can be said that SHM No. 11337 has the status and legal basis for the issuance of the certificate and is issued in accordance with the procedures contained in the PP on Land Registration. As time went by, when the builder wanted to build housing on the land, it turned out that there were other parties, namely AA and AM who stated that they also had a share of the land covering an area of 1.

Basically SHM No. 11337 based on the provisions of Article 19 of the UUPA has a strong evidentiary nature, but in Article 32 of the PP on Land Registration it is stated that the certificate as a guarantee of legal certainty can still be contested by other parties who feel they have rights to the land and the other party can prove otherwise. Thus, AA and AM who feel they have a share of the land rights as evidenced by an underhand grant can file a lawsuit to the court to prove it.

If the case is submitted to the court, the strength of evidence from the SHM and the grant letter under the hand depends on the judge's judgment. In line with that, Ilyas Ismail is of the opinion that if it is deemed that there is a problem, then the matter is brought to court. The panel of judges will later assess whether the certificate is said to be legally flawed or not after a court decision. However, before a court decision is made, the SHM must be viewed as a strong piece of evidence.

Therefore, to achieve the guarantee of legal certainty after carrying out land registration and the results obtained from the land registration are in the form of certificates. This certificate is actually a means of proof in the event of a dispute. So that the location of a legal certainty is where the judge can examine and decide on a disputed case by seeing that between the two disputing parties to prove each before the court. As evidenced by the disputing parties regarding the object of land registration which consists of the type of land rights, the holder of the rights, physical information about the land, the burden on the land, and the legal events that occur.

Closing

Basically SHM No. 11337 issued on behalf of HS and EM have strong evidentiary power because as evidence, unless the AA and AM file a lawsuit to the court, the strength of evidence from the SHM and the underwritten grant letter depends on the judge's judgment. This certificate is actually a means of proof in the event of a dispute, because the certificate guarantees legal certainty to the person whose name is listed in the certificate. The party who feels that they have the rights to part of the plot of land should file a lawsuit to the court so that the court can decide how strong the proof of the grant letter is.

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