

Study of Dual Certificate Law in Ownership of Land Rights

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Abstract. Now there are many problems scrambling for land ownership, because the function of land is so important for everyone who is faced with limitations on the availability of land. This causes many problems so that there is a certificate where the object listed in the certificate is not what it should be, but the land owned by others then there is also evidence of the same ownership of two certificates with one object called a double certificate. A double certificate is a certificate with the same plot of land. So, one plot of land with two or more different certificates of data. Dual certificates result in legal uncertainty for holders of land rights. Settlement of the double certificate can be done by way of deliberation pursued by the parties, namely the rights holder as a plaintiff and the Administrative City Land Office as the defendant. If it cannot be reached by deliberation, the City Administrative Land Office can make a settlement unilaterally by reviewing the issuance of a double certificate that has been issued.

Keywords: Double Sertipikat; Land Rights; Land Ownership

1 Introduction

National Land Law whose main provisions are contained in the Agrarian Basic Law Number 5 of 1960 is the basis and legal basis for owning and controlling land by other people and legal entities in order to meet their needs, for business or development. Therefore, the existence of individual rights to the land is always sourced from the Right of the Indonesian Nation to the land in the National Land Law, including, the right of the Indonesian nation to land article 1 paragraph (1), and the right to control the State article 2 paragraph (1) and (2) of the Agrarian Basic Law, as well as land rights (primary and secondary) and collateral rights to land.

Related to land rights, article 19 of Law No. 5 of 1960 explains that there is an obligation that must be carried out by the government as the highest agency to carry out land registration in order to ensure legal certainty to landowners in terms of location, boundaries, and land area, land status, land rights objects and the provision of proof of rights in the form of certificates. Based on the provisions of Article 19 of Law No. 5 of 1960, property rights, business use rights, building rights including the transfer and removal of rights and their imposition with other rights must be registered, as a pleasure that must be implemented for the holder of these rights to register the land he owns in order to obtain legal certainty as the owner of the right, so that the owner of the right knows clearly about the circumstances, the location, boundaries and area of land it has.

In order to ensure legal certainty in the field of land tenure and ownership, the certainty of the location and boundaries of each plot of land cannot be ignored. From past experience quite a lot of land disputes that arise as a result of the location and boundaries of land plots are not true. Therefore, the problem of measurement and mapping and the provision of large-scale maps for the purposes of organizing land registration is something that should not be ignored and is an important part that needs serious and careful attention, not only in the framework of land tenure data collection but also in the assessment of land acquisition / land ownership data and data deviations.

If there is a dispute over the plot of land, then by the landowner, the certificate in his hand is used to prove that the land belongs to him. The proof of rights or land certificate can serve to create an orderly land law and help activate people's economic activities (for example if the certificate is used as collateral). Because the name of the certificate of rights is a proof of land that has been registered by an official body that is legally carried out by the State on the basis of the Law.

Along with the high value and benefits of land, many people are trying to obtain proof of land ownership by having a fake certificate, where the data on the certificate does not match that in the land book. The number of fake certificates is quite large, causing insecurity. Generally, fake certificates are made on land that is still empty and has a high value that uses old certificates. Certificate falsification occurs because it is not based on the correct basis of rights, such as the issuance of certificates based on forged ownership certificates, other forms in the form of ATR / BPN stamps and falsification of land data.

This causes many problems so that sometimes there is a certificate where the object listed in the certificate is not what it should be but the land belonging to someone else who is made a letter by an irresponsible person or there is negligence in the issuance of the letter, then there is also evidence of the same ownership of two degrees with one object that is often called a double certificate.

A double certificate is a certificate that is one piece of land in common. So, one plot of land with 2 (two) certificates or more different data. Double certificates bring the result of legal uncertainty for land rights holders who are not expected in land registration in Indonesia. Therefore, based on the background mentioned above the author is interested in discussing about "Legal Review of Double Certificates in Land Ownership".

2 Research Methods

In the discussion of the proposed problem, the author will take a normative juridical approach where this approach is carried out by approaching the problem in terms of law, discussing and then reviewing the literature materials in the form of books and statutory provisions related to the issue to be discussed.

Data analysis used descriptive-qualitative data analysis, namely the presentation of data and information which was then analyzed qualitatively. Qualitative descriptive is research that seeks to describe and interpret existing conditions or relationships, various opinions and consequences that occur, or trends that occur. This descriptive analysis technique is used to interpret and describe the data that has been obtained from the results of literature searches and documentation as well as data from the questionnaire results.

3 Results and Discussion

Certificate as Proof of Rights

Provisions in Law No. 5 of 1960 concerning the Basic Rules of Agrarian Principles which contain a proof of land rights, namely:

Article 19 of Law No. 5 of 1960:

- 1) To ensure legal certainty by the Government, land registration is held in all regions of the Republic of Indonesia in accordance with the provisions regulated by government regulations.
- 2) The registration in Paragraph 1 of this article includes:
 - a. Measurement, land acquisition, and bookkeeping;
 - b. Registration of land rights and transfer of such rights;
 - c. Provision of letters of proof of rights (the author's bottom line), which applies as a powerful means of proof.
- 3) Land registration is organized with the state of the State and society in mind, socio-economic traffic needs and the possibility of its implementation according to the consideration of the Minister of Agrarian Affairs.
- 4) In government regulation regulated the costs concerned with registration referred to in Paragraph 1 above, provided that the people who cannot afford to be exempted from payment of these costs.

Article 23 of Law No. 5 of 1960:

- 1) Property Rights, as well as any transition, removal, and release of them with other rights shall be registered in accordance with the provisions referred to in Article 19.
- 2) Registration referred to in Paragraph 1 is a strong proof of the removal of property rights and the legality of the transfer and imposition of such rights

Law No. 5 of 1960 stipulates that the Government holds land registration in all regions of the Republic of Indonesia which aims to ensure legal certainty over land rights. As for the land registration activities, including measurement, land acquisition and clearing; registration of land rights and transfer of such rights; and the provision of proof of rights, which apply as a powerful means of proof. The rights to land in the Law No. 5 of 1960 issued a letter of proof of its rights are Property Rights, Business Use Rights, and Building Use Rights.

Law No. 5 of 1960 does not specify who government agencies are holding land registrations in all regions of the Republic of Indonesia and also does not mention what the name of the valid proof of rights as a strong proof of proof. The government regulation intended by Article 19 Paragraph (1) of Law No. 5 of 1960, is originally Government Regulation No. 10 of 1961 concerning Land Registration. In Government Regulation No. 10 of 1961, it is affirmed that the government agency that conducts land registration is the Land Registration Office, while the name of the proof of rights letter is a certificate. The definition of certificate according to Article 13 paragraph (3) of Government Regulation No. 10 of 1961, is a copy of the land book and measuring letter after stitching it together with a cover paper whose form is determined by the Minister of Agrarian Affairs, called a certificate and given to the rightful.

Government Regulation No. 10 of 1961 since July 8, 1997 was declared invalid since the enactment of Government Regulation No. 24 of 1997 concerning Land Registration. In Government Regulation No. 24 of 1997, it is affirmed that government agencies that organize land registration in all regions while the implementation of land registration is carried out by the Head of the District / City Land Office. The name of the letter of proof of rights as the final product of land registration activities for the first time is a certificate.

Settlement So As Not to Arise Double Certificate On One Land Object

The mechanism for handling land rights disputes (double certificates) is resolved through the National Land Agency (BPN) and through the courts.

Through the National Land Agency

a. Complaints/objections from the public

A dispute over land rights arises due to complaints / objections from persons / Legal Entities containing the truth and demands on a State Administrative Decision in the field of land that has been determined by the State Administration Official in the National Land Agency, where the decision of the Official is considered detrimental to their rights to a certain plot of land. With the complaint, they want to get an administrative settlement with the so-called correction immediately from the Official authorized for it. That the authority to make corrections to a decision of state administration in the field of land (certificate / Decree granting land rights), only exists at the Head of the National Land Agency. The dispute over land rights is to include several kinds, among others, regarding the status of the land, who is entitled, a rebuttal to the evidence of acquisition that is the basis for granting rights or registration and registration.

b. Research and data collection

After receiving the complaint file from the community above, the authorized officials conduct research on data / administration and results in the field / physical regarding its mastery so that it can be concluded that the complaint is reasonable or not for further processing.

c. Mutation prevention (status quo establishment)

In order for the interests of people or Legal Entities entitled to the disputed land to get legal protection, then if it is deemed necessary after the Head of the local Land Office conducts research and if from the belief it must be quozied, blocking disputed land can be carried out.

d. Deliberative service

On land rights disputes submitted to bpn to be asked for a settlement, if the parties to the dispute can be met can be resolved through deliberation and BPN is often asked as a mediator in resolving disputes peacefully and mutual respect between the parties to the dispute.

e. Revocation / cancellation of the State Administrative Decree in the field of Land by the Head of BPN based on legal / administrative defects in its issuance.

If it is associated in the provisions of Article 32 paragraph (1) of Government Regulation No. 24 of 1997, then the certificate of land rights as a strong evidence tool is an authentic evidence tool that has perfect evidentiary power because the issuance of land rights certificate has gone through a long process where for parties who already feel they have the right to land can object to juridical data for a predetermined period of time.

The certificate provides proof power for land rights owners whose names are listed in the certificate, unless there is a physical data cacade then the legal power of the certificate will be lost. With the juridical cacade and physical data cacade so that it can cause a double certificate this happens to certificates that are not mapped incorrectly in the land registration map by the local Land Office

Before issuing a decision on the cancellation of the certificate must carry out the principle of openness (fairplay), the principle of balance, the principle of equality in treatment and has carried out its functions and authorities in accordance with the principle of balance, the principle

of equality in treatment and has carried out its functions and authorities in accordance with the general principles of good governance.

Settlement through the Court, carried out if the efforts of the deliberation are deadlocked, or it turns out that there is a problem of principle problems that must be resolved by other authorized agencies, such as the court, then to the concerned it is advisable to submit the matter to the court. So in general the nature of this dispute is due to a complaint that contains a conflict of land rights and other rights to an opportunity / priority or the existence of a provision that harms him. In the end, the settlement, always must pay attention / always based on the applicable regulations, pay attention to the balance of interests of the parties, uphold the legal justice and this settlement is attempted to be completed. Dispute resolution through the court is a form of dispute resolution that results in a decision (vonnis) that is justifying or blaming one of the litigants.

The above happens because the court is given the power to determine who is right and wrong. On the other hand, the resolution of disputes outside the court (in the customary legal system) is based on the power of culture oriented towards peace and harmony in people's lives. Such a way of settlement does not cause consequences for the existence of wrong and right parties and still maintains good relations between the parties to the dispute. The aspects that influence the choice of action in the resolution of a dispute in the form of factors that affect behavior, meaning, and purpose, as in advance are basically not independent.

These three aspects for one's actions have something to do with each other. The use of a certain dispute resolution institution in addition to having a certain expected purpose, also at the same time has a certain meaning for its actions. In addition to the relationship between the goal and the calculation of profit and loss, there is also a relationship between the choice of action taken and the consequences that will occur.

A court is a dispute resolution institution in a society whose work depends on the citizens of the community. The court cannot be powerless without the actions of the citizens who use it. Resolving disputes through the courts is not a compulsion because the law allows the disputing parties to resolve disputes outside the court by means of peace. On the basis of the above, it is necessary to pay attention to Article 1365 of the Civil Code, any unlawful act that brings harm to a person or legal entity requires that a person or legal entity due to administrative errors incurring losses can compensate for these losses. When in the general judicial process, the civil judge after receiving the lawsuit and a valid copy of the decision of the state administrative court body may consider and decide the existence of the damages.

4 Conclusion

Certificates in this case can be done in several ways. The first is by way of deliberation taken by the parties if it cannot be taken the way of deliberation can make a settlement unilaterally by reviewing the issuance of double certificates that have been issued. The results of the review can be followed up by canceling the certificate which can actually be decided by the National Land Agency.

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