

Legal Protection of Double Certified Land Right Holders

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ABSTRACT

This research examines legal protection for holders of land rights with dual certificates in Indonesia. This paper discusses specific court cases. This research outlines the legal framework for land registration in Indonesia, emphasizing the government's responsibility to ensure legal certainty through land registration. This also highlights the negative system in land registration, where a certificate is considered valid until proven otherwise in court. The main findings of this research aim to provide insight into the challenges of resolving land disputes and the need for effective legal protection for land rights holders in Indonesia.

Keywords: Land Title Holder, Legal Protection, Dual Certificate

Introduction

Indonesia as a developing country, there is a lot of land conversion from agricultural land to residential land, which is often changed again to different uses, causing many land disputes to arise. This land dispute involves two or more parties who feel disadvantaged in their rights to use and ownership of their land, and is often resolved through deliberation or court proceedings.

The issue of natural resources is regulated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which confirms that "Earth and Water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." This provision is also confirmed in Article 1 number 2 of Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA), which states that the earth, water, space and natural resources in the territory of Indonesia are the collective property of the people who are members of the Indonesian state. Rights to natural resources are sacred, eternal and fundamental. Based on the provisions of Article 2 Paragraph (2) of the UUPA, the meaning of controlling is "regulating" and "organizing" which is meant by the Constitutional Court through its decision to

provide clarity on the scope of the meaning of "controlling", namely making, the authority mentioned is related to:

- a. Use/allocation (use), supplies (reservation), and maintenance (maintenance) over the earth, water, space and natural resources in the territory of the Unitary State of the Republic of Indonesia (NKRI).
- b. Determining and regulating types of land rights.
- c. Determination and arrangement of legal relationships between people and/or law offices with land objects.

This authority must be directed at efforts to achieve maximum prosperity for the people. The right to control land by the state means that the state or the Government guarantees legal certainty regarding land control, one form of which is by registering land throughout the territory of the Republic of Indonesia in accordance with the provisions regulated by government regulations. The purpose of land registration is to guarantee legal certainty by the Government, as stated in Article 19 of Law Number 5 of 1960 concerning Agrarian Principles (UUPA). This article states that "to ensure legal certainty, the Government will carry out Land Registration throughout the territory of the Republic of Indonesia in accordance with the provisions regulated by Government Regulations." Article 19 of the UUPA means that the Government has an obligation for citizens throughout Indonesia to carry out land registration in order to achieve legal certainty and thus minimize the occurrence of land disputes. Land registration which aims to provide legal certainty is known as right register or legal cadastre. Through this land registration, efforts are made to ensure the status of registered rights, the subject of rights, and the object of rights. This land registration process produces a certificate as proof of rights to the land. On the contrary, fiscal register is a type of land registration that aims to determine who is responsible for paying taxes on land. This land registration produces a Tax Return for Land and Building Tax (SPPT PBB) as proof of payment of land tax.

Provisions regarding land registration are further regulated in Government Regulation Number 24 of 1997 concerning Land Registration (hereinafter referred to as Government Regulation Number 24 of 1997), which came into effect on 8 October 1997 as a replacement for Government Regulation Number 10 of 1961 concerning Land Registration. This regulation regulates the implementation of land registration as mandated by Article 19 UUPA. Further details regarding implementation are regulated in the Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Office Number 3 of 1997 concerning Provisions for Implementing Government Regulation Number 24 of 1997 concerning Land Registration.

To understand the legal force of a land certificate, knowledge of the guarantee of legal certainty in land registration, as regulated in Article 19 paragraph (1) of the UUPA, is very necessary. This aims to prevent the issuance of land certificates to unauthorized parties (not owners). Therefore, land registration in Indonesia adheres to

the negative stelsel system. This system means that everything stated in the land certificate is considered correct until proven otherwise before the district court. Article 19 paragraph (2) letter c of the UUPA confirms that these letters of proof of right are valid as strong evidence. However, in the context of this negative system, land certificates can still be invalidated if there is evidence showing the invalidity of the land certificate.

Library Review

Etymologically, the meaning of certificate comes from the Dutch word "Certificate", means a certificate of evidence and/or a statement that proves something. So, a certificate is a certificate of evidence consisting of a copy of the land book and measurement letter, covered with a picture of Garuda and bound together, issued by the National Land Office. A Land Rights Certificate is proof of ownership of land rights which has legal force for the holder as long as there is no evidence to the contrary. For this reason, the certificate is evidence that states that the land has been administered by the state. By carrying out the administration by the state, the proof is then given to the person who has administered it. The law functions to protect the certificate holder and is stronger if the holder's name is stated on the certificate. So, if the certificate holder does not have a name, then it is necessary to change the name to the holder so that it can avoid interference from other parties.

A land certificate is a document that proves ownership rights to land as the final product of the land registration process. The land registration institution itself in Indonesia only existed in 1960 when Government Regulation No. 10 of 1961 was implemented which regulates Land Registration. This institution was born because of an order from UUPA, that one of the aims of issuing UUPA (Law No. 5 of 1960 concerning Basic Agrarian Principles Regulations) is to provide a guarantee of legal certainty for the land rights of the Indonesian people. Article 19 of the UUPA mandates that the guarantee of legal certainty will be realized by implementing land registration throughout Indonesia.

A land certificate is a certificate of proof of ownership of a plot of land or the holder of rights to a plot of land, and which acts as strong and legal evidence. The issuance of a land title certificate shows that someone has the right to that piece of land. Apart from being a sign of legal ownership, a land certificate can also be used as a strong means of proof of ownership of a plot of land. It can also be proven before a court that the disputed land certificate is incorrect or invalid.

According to the Big Indonesian Dictionary, a certificate is a deed, certificate, certificate. Then it is clarified by article 1 paragraph 20 of Government Regulation Number 24 of 1997 concerning Land Registration which states, a certificate is a letter of proof of rights as intended in article 19 paragraph (2) letter c UUPA for land rights, management rights, waqf land, ownership rights to apartment units and mortgage rights, each of which has been recorded in land book in question.

A certificate is a proof of title consisting of a copy of the land book and measurement letter, covered, bound together, the form of which is determined by the Minister of State for Agrarian Affairs/Head of the National Land Office. According to Government Regulation no. 24 of 1997 concerning Land Registration Article 1 number 17 defines a Measurement Letter as a document which contains physical data on a plot of land in the form of a map along with a description. Meanwhile, Article 1 number 15 explains that a Registration Map is a map that depicts a plot or parcels of land for land bookkeeping purposes.

A certificate is a letter of evidence consisting of a copy of a land book and a measurement letter, with a cover bound together and the form determined by the Minister of State for Agrarian Affairs/Head of the Land Office. Certificates are issued for the benefit of the rights holder concerned in accordance with the physical data and juridical data that have been registered in the land book as intended in Article 30 paragraph (1) PP No. 24 of 1997. A certificate is defined as an official letter made and issued by a government organ to provide legal certainty regarding land ownership status, and also functions as a strong means of proof. A land certificate is an output or product from the Land Office which is concrete, individual and final.

On the other hand, the definition of the meaning of Land Certificate is as follows

- a. In Agrarian law, the definition of a certificate is basically an abstraction of a general list of land rights and is the only formal proof of land rights and the only use of formal proof of land rights; or in other words, it can be said that the certificate is a derivative or copy of the land book and measuring certificate.
- b. The General Register in the context of land registration consists of a land register; list of names; list of land books, and list of measuring documents which are the results of village-by-village or sporadic inventory (land registration) activities in the context of community services.
- c. Surat Ukur is an authentic deed that clearly describes the object of the right to land, location, area, boundary marks and indications and so on.
- d. Land images can be obtained through land map quotations .

With regard to the types of Land Certificates, currently there are 3 types of Certificates, namely:

- a. A certificate of land rights is often called a Certificate
- b. Land title certificates prior to Law Number 4 of 1996 concerning Mortgage Rights were known as Mortgage Certificates and Credit Verband Certificates. After the enactment of Law no. 4 of 1996 concerning Mortgage Rights, the mention of Mortgage Certificates and Creditverband Certificates is no longer used, then the reference is just Mortgage Rights Certificates.
- c. Certificate of ownership of the apartment unit

One of the basic objectives of land registration as stipulated in Article 3 of Government Regulation no. 24 of 1997, is to provide legal certainty and protection to

holders of rights to land plots, apartment units and other registered rights so that they can easily prove themselves as holders of the rights in question. To provide legal certainty and legal protection, the relevant rights holder is given a land rights certificate.

So a title certificate is proof of land that has been registered and registered by an official office which is legally carried out by the state on the basis of law. For this reason, the consequences of the certificate are:

1. provide a guarantee of security of use for the owner;
2. encourage or increase tax collection by the state;
3. increase the function of land as a credit guarantee;
4. increasing land market monitoring;
5. protect the land of the State;
6. reducing land disputes;
7. facilitate activities rural land reform;
8. increase urban planning and advancing infrastructure;
9. encouraging quality environmental management;
10. able to provide good land statistical data.

The main principle of registering land rights is to facilitate security guarantees for land ownership and transfer of rights. Based on the description above, it can be said that a land rights certificate is useful as proof of ownership of a land right for the holder of the land rights in question. This means that a land certificate is issued for the benefit of the land right holder. It is further stated in Article 32 of the PP on Land Registration that a certificate of title to land is a proof of title which 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 measurement letter and land title book in question. The granting of land rights is carried out by the Land Office, the Regional Office of the National Land Office, and the Head of the National Land Office of the Republic of Indonesia, depending on the type and area of land for which the request for land rights is submitted. The certificate is issued by the Regency/City Land Office.

One of the means of proof of land rights is a certificate. A certificate is strong and authentic evidence. The strength of the certificate is a guarantee of legal certainty for the certificate holder as perfect evidence as long as there is no opposing party who proves otherwise. It will be easy for a person or legal office to prove themselves as the holder of the rights to a plot of land and the condition of the land, for example the area, boundaries, existing buildings, the type of rights along with the burdens that exist on the rights to the land, and so on.

Certificates may only be given to parties whose names are listed in the relevant land book as the right holder or to other parties authorized by them. In the event that a certificate has been legally issued to a parcel of land in the name of the person/legal office that acquired the land in good faith and actually controls it, then other parties

who are deemed to have rights to the land can no longer demand the implementation of that right if within 5 years of the issuance of the certificate they do not submit 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 control of the land or the issuance of the certificate. Uses of the Land Certificate

Concept of Registration of Land Rights

In Government Regulation Number 24 of 1997 concerning Land Registration, Article 8, Article 13, Article 15, Article 18, and Article 19 in land registration is known as a sporadic land registration system. Sporadic land registration is a land registration activity for the first time regarding one or several land registration objects in an area or part of the territory of a village/sub-district individually or en masse (Herman Hermit, 2004). In sporadic land registration, the initiative comes from the land owner (individually) or also from several land owners (mass) at the land owner's expense.

Mass Land Certification Through the National Agrarian Operations Project (Prona or PTSL), obtaining certificates takes a long time, and is relatively high and there is no synchronization between government agencies concerned with land registration, as well as regional regulations that deviate from higher regulations. Apart from these factors, there are other non-technical factors that are behind this emergence, namely the passive attitude of agrarian agencies, waiting for the presence of community members (land rights holders) who wish to register their land rights. In this way, this work becomes very slow, then officers are found who have a disgraceful mentality, not helping the people (rights holders), but actually fooling them, because of their behavior this creates a bad image for the agrarian institution. Second, the agrarian cycle at that time was less integrated, meaning that agrarian tasks and functions in all their aspects were not yet running as they should. Each function runs independently and is compartmentalized.

1.1 Research methods

To guarantee scientific truth, research must use appropriate methods, because this is a guideline for analyzing research data. The following are several methods used in this research:

1. Research Type

This type of research is normative juridical, meaning that the problems raised, discussed and described in this research are focused on applying positive rules or norms. This type of normative juridical research is carried out by examining various kinds of formal legal rules such as laws, literature that is theoretical concepts which are then connected to the problem that is the subject of discussion.[\[3\]](#)

2. Problem Approach

Legal research is a scientific activity carried out systematically to gain an understanding of the resolution of a legal event being researched. Every legal research also involves the use of a particular approach to dealing with the legal issues being studied. In this research, the author applies a case approach (case approach) in the Gresik District Court Decision Number 73/Pdt.G/2023/PN Gsk, the approach used is Law No. 5 of 1969, ATR KBPN ministerial regulation Number 9 of 2022, Government Regulation Number 20 of 2021, Law Number 1 of 2023, and also uses a conceptual approach.

3. Sources of Legal Materials

Sources of legal materials are sources used to assist in writing legal research. The legal sources used in this research use primary legal material sources and secondary legal material sources. The primary legal sources used are Law No. 5 of 1969, Ministerial Regulation ATR KBPN Number 9 of 2022, Government Regulation Number 20 of 2021, Law Number 1 of 2023 and also decisions from courts such as the Gresik District Court Decision Number 73/Pdt.G/2023/PN Gsk. Apart from that, the secondary legal sources used were books on Agrarian law and journals on dual certificate dispute law.

4. Legal Material Collection Techniques

The collection of legal materials is done by recording and reading every document and information about legal materials related to land registration. In addition to that, research was also conducted through examining literature books to obtain the theoretical basis of experts' opinions.

5. Technical Analysis of Legal Materials

The nature of this research is descriptive, in connection with this the legal material that has been obtained will be analyzed qualitatively, therefore in this research no general conclusions will be drawn, so the picture obtained from this research is qualitative descriptive. Qualitative descriptive data analysis is "an effort to obtain a brief overview of a problem based on applicable legislation and related to the problem to be discussed in a writing, then arranging it logically and systematically."[\[4\]](#) The next steps used in conducting legal research are:

- a. identify legal facts and eliminate matters that are not relevant to determine the legal issue to be resolved.
- b. collection of legal materials and, if deemed relevant, also non-legal materials;
- c. conducting a review of the legal issues raised based on the materials that have been collected;
- d. draw conclusions in the form of arguments that have been built in the conclusion.

Meanwhile, in the last part (chapter four) this presentation ends with a conclusion which contains conclusions from all the descriptions of the previous chapters and suggestions for further research.

Discussion

Settlement of Dual Certified Land Ownership at the Land Office

Indonesia as a developing country, there is a lot of land conversion from agricultural land to residential land, which is often changed again to different uses, causing many land disputes to arise. This land dispute involves two or more parties who feel disadvantaged in their rights to use and ownership of their land, and is often resolved through deliberation or court proceedings.

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registration which aims to provide legal certainty is known as *rechts cadaster* or legal cadaster. Through this land registration, efforts are made to ensure the status of registered rights, the subject of rights, and the object of rights. This land registration process produces a certificate as proof of rights to the land. In contrast, fiscal cadastre is a type of land registration that aims to determine who is responsible for paying taxes on land. This land registration produces a Tax Return for Land and Building Tax (SPPT PBB) as proof of payment of land tax.

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Thus, the occurrence of double certificates is caused by human factors (human error). Errors, negligence, or even bad intentions on the part of the applicant in determining boundaries to which they are not actually entitled, with the aim of obtaining personal gain, can cause overlapping, whether intentionally or not. Apart from that, another cause is the issue of land inheritance, where there are cases where the certificate holder, either by the community or the heir, sells land to another party without the knowledge of the other party who has the right, so a certificate is issued in the buyer's name. Then, the heirs can also issue certificates for the same land. Apart from that, when people do not use their land for a long time, the land can become neglected and is often used by irresponsible parties.

Settlement of Dual Certified Land Ownership

According to the law, the National Land Office is a non-ministerial government institution that is under and responsible to the president and leadership by the head (in accordance with Presidential Decree Number 63 of 2013). The National Land Office carries out government duties in the land sector nationally, regionally and sectorally in accordance with the provisions of statutory regulations. National Land Office

The Land Office functions to carry out policy formulation and planning for control and use of land with the principles that land has a social function as regulated in the UUPA, carrying out measurements and mapping as well as land registration in an effort to provide certainty of rights in the land sector. Normatively, it is one of the institutions or institutions in Indonesia that is given the authority to carry out the mandate in managing the land sector in accordance with Presidential Decree Number 10 of 2006 concerning the National Land Office which states that BPN carries out duties in the land sector nationally and sectorally.

The national land office always seeks solutions to resolve land disputes based on applicable laws and regulations by paying attention to a sense of justice and respecting the rights and obligations of each party. Such as efforts to resolve Zulfah's double certificate case, namely using a deliberation method carried out by the parties. In resolving land disputes through deliberation, one condition is that the dispute does not take the form of determining ownership of land rights which can give rights or eliminate someone's rights to the disputed land and that the parties to the dispute have quite strong objections and adhere to local customary law.

A solution or way of peace that is mutually beneficial to the parties. There are several cases that may be handled and resolved through mediation. One of them is the double certificate case which occurred at the Land Office as a vertical agency of the National Land Office of the Republic of Indonesia in Regency/City which is under and responsible to the Head of the National Land Office of the Republic of Indonesia through the Head of the Regional Office of the National Land Office. The Land Office is headed by a Head. The position of the National Land Office as the only agency or institution that is given the authority to manage the land sector and is recognized normatively through Presidential Regulation (Perpres) Number 10 of 2006 concerning the National Land Office. In this case, it is important as a basis for the Land Office, to be a mediator in resolving land disputes. Therefore, an agreement to resolve disputes through mediation is important so that mediation decisions do not violate the law and can be implemented effectively in the field.

Conclusion

Causes of Double Certificates: The occurrence of double certificates is generally caused by administrative errors, overlapping data at land agencies, or elements of fraud and falsification of documents. **Legal Consequences** Double certificates create legal uncertainty and have the potential to trigger land ownership disputes. This is detrimental to parties who have legal rights to the land. Legal Protection Holders of double-certified land rights have the right to obtain legal protection through:

Administrative Efforts Submit an objection to the National Land Agency (BPN) for clarification and verification of certificate data. **Civil Legal Remedies** Submitting a lawsuit to court to determine legal ownership and cancellation of invalid certificates.

Criminal Legal Measures: If elements of fraud or forgery are found, the perpetrator may be subject to criminal sanctions in accordance with applicable regulations. Dispute Resolution: Disputes resulting from duplicate certificates can be resolved through mediation, conciliation, or litigation in court. The court's decision will become a binding legal basis regarding legal ownership. Preventing Double Certificates: To prevent double certificates from occurring, improvements to the land administration system, data digitization, and transparency in the process of issuing land certificates are needed.

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