Legal Protection for the Land Owners Issuance of Double Certificates[1]

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Abstract
The problem of multiple certificates still often occurs in our society. The overlap in the issuance of multiple certificates makes land rights owners have to fight to get their rights. The purpose of this study is how the legal protection for certificate holders of land rights for the issuance of multiple certificates. The problem of multiple certificates is an unresolved problem. Owners of land rights immediately register their land in order to obtain a certificate as proof of ownership, but what happens is the issuance of certificates that should be strong evidence as ownership rights is difficult to prove its validity. The issuance of multiple certificates originated from the granting of new rights by the Land Office based on an adjudication process. Adjudication, namely activities carried out within the framework of the land registration process for the first time, includes the collection and determination of physical data and juridical data regarding one or several objects of land registration for the purpose of registration. This adjudication process was carried out in an inaccurate and inaccurate manner, resulting in the issuance of multiple certificates. The research method used is normative juridical and empirical juridical methods.

1. Introduction

Land is a strategic place for human welfare in human life, even to the point of passing away before the Almighty, humans cannot be separated and released from land. In this regard, everyone has the right to own land, but of course the person who owns the land must have proof of ownership in the form of a certificate of ownership of the land, this is to provide legal certainty and protection

[1] A.P. Parlindungan, 1989, Bunga Rampai Hukum Agraria Serta Landreform, Bandung, hal. 18-19).

to rights holders over a parcel of land, apartment units and other rights. registered in order to easily prove himself as the holder of the right in question.

Humans in meeting their needs need land for a place to live, to cultivate land until later when he dies. In running the government, the government needs land to build buildings and other facilities needed by the state and its people. Along with the increasing number of people, of course, they need land to build houses, plantations and farms, office centers to build transportation routes to make it easier for people to access transportation routes.

The increasing demand for land makes it seem as if the land is getting narrower. Therefore, do not be surprised if the selling price of land has increased higher. The imbalance between the supply of land and the need for land has created various problems with many facets. The problem of land is increasingly complex when the land or land is no longer able to accommodate all community activities.

So to reduce the existence of problems regarding land ownership due to unclear legal evidence, it is very necessary for everyone who owns land to have a certificate of ownership of land as proof of ownership that is real, valid and cannot be contested by anyone.

The purpose of enacting the Basic Agrarian Law is to lay the foundations for drafting a national agrarian law which is a tool to bring prosperity, happiness and justice to the state and people, especially the peasantry, in order to create a just and prosperous society, laying the foundations for unity and simplicity in land law, as well as laying the foundations to provide legal certainty regarding land rights for all people. Legal certainty for owners of land rights, according to the UUPA itself, can only be obtained through the land registration procedure (which some people call it the process of "land certification").

From the various cases that occurred regarding land ownership it is important that everyone must have a certificate as juridical proof of someone's ownership of a piece of land that he owns so as not to cause various problems in society. Because ownership of a land is a human right of every person or citizen which has been regulated in the 1945 Law of the Republic of Indonesia in Article 28 paragraph (4) which reads "Everyone has the right to have private property rights and these property rights may not be taken arbitrarily transferred by anyone".

Land issues require special attention and handling from various parties because the current development requires a guarantee of certainty over land rights. To avoid disputes between people who need land, regulations regarding land were made which are useful for regulating all land use activities, namely Law Number 5 of 1960 which requires that land throughout Indonesia must be inventoried.

Land is the object that is most susceptible to disputes, both disputes between individuals, individual disputes with legal entities, disputes between legal entities, even disputes involving the Government, so that legal arrangements related to the tenure/granting of land rights must be maximized to guarantee protection for rights holders. above ground. Property rights are hereditary rights,

the strongest and fullest, which can be owned by people over a plot of land. Property rights are the strongest rights, especially in terms of maintaining rights over land. This property right can be transferred and transferred to other parties and may only be owned by Indonesian citizens (WNI). Meanwhile, foreign nationals (foreigners) are only entitled to ownership rights due to inheritance without a will or mixing of assets due to marriage.

Legal certainty regarding land rights as mandated by the BAL contains two dimensions, namely the certainty of the object of land rights and the certainty of the subject of land rights. One indication of the certainty of the object of land rights is shown by the certainty of the location of the land parcel with geo-referenced coordinates in a land registration map, while the certainty of the subject is indicated by the name of the holder of land rights listed in the land registration book at the land agency. In summary, a copy of The map and land registration book are known as Land Certificates. However, in practice, the legal certainty of land rights is sometimes not guaranteed as expected.

The problem that often arises in society is how to provide legal protection for landowners who own land that already has a certificate, but in fact there are also those who have a certificate with the same object.

2. Research Method

This study uses normative legal research methods and empirical law. In normative legal research it tries to examine statutory regulations while empirical legal research examines data from research locations about the extent of land registration and legal protection for certificate owners as holders of land rights. The data obtained comes from primary data and secondary data. The data obtained will be analyzed to answer existing problems regarding land certificates for holders of land rights.

3. Results and Discussion

1. Definition of Land Registration

Although the Basic Agrarian Law regulates land registration, it does not provide an understanding of what is meant by land registration. According to A.P. Parlindungan, land registration comes from the word Cadastre (Dutch Cadastre) a technical term for a record (record), showing the area, value and ownership (or other rights) of a plot of land. This word comes from the Latin "Capistratum" which means a register or capita or unit made for the Roman land tax (Capotatio Terrens). In a strict sense, Cadastre is a record on land, the value of the land and the right holders and for tax purposes. Thus, Cadastre is an appropriate tool to provide descriptions and identification of these descriptions as well as continuous recording of land rights.

The term land registration or land registration gives the impression that the main object of registration or the only object of registration is land. Indeed,

regarding the collection to the presentation of physical data, the land which is the object of registration is to ascertain its location, boundaries, area on the registration map and presented in the land register. The word Cadastral which refers to the activities in the physical field comes from the Latin term Capistratum which is a list containing data regarding land.

The definition of new Land Registration is contained in Article 1 number 1 of Government Regulation Number 24 of 1997, namely a series of activities carried out by the government continuously, continuously and regularly, including collection, processing, bookkeeping and presentation and maintenance of physical data and juridical data in the form of maps and a list of land parcels and apartment units, including the issuance of certificates of proof of title for land parcels for which there are rights and ownership rights to apartment units and certain rights that burden them.

The definition of land registration in Government Regulation Number 24 of 1997 is a refinement of the scope of land registration activities based on Article 19 paragraph (2) of Government Regulation Number 10 of 1961 which only includes measurement, mapping and bookkeeping of land, land registration and transfer of land rights and the granting of proof of rights as strong evidence.

Land registration activities generate two kinds of data, namely physical and juridical data. Physical data is information regarding the location, boundaries and area of land parcels and apartment units that are registered, including information regarding the existence of buildings or parts of buildings on them. Juridical data is information regarding the legal status of registered land parcels and apartment units, their rights holders and other parties as well as other burdens on them.

The land registration activity for the first time produced proof of rights in the form of a certificate. In land registration activities, there may be a transfer of rights, encumbrance of rights, extension of land rights, splitting, separation and merging of land parcels, distribution of joint rights, annihilation of land rights and ownership rights of apartment units, transfer and deletion of mortgage rights, changes in data or a court order and a change in the name of the right holder must be registered with the local Regency/Municipal Land Office until it remains in accordance with the latest circumstances.

The purpose of carrying out land registration has in essence been stipulated in Article 19 paragraph (1) of Law Number 5 of 1960 that land registration is a Government task carried out in the framework of ensuring legal certainty in the land sector (rechts cadaster or legal cadaster). In addition, land registration is also required to determine the classification and tax amount (fiscal cadaster).

The aim of providing legal certainty guarantees is the main objective in land registration as stipulated by Article 19 of the UUPA. So obtaining a certificate is not just a facility, but is the right of the holder of land rights guaranteed by law.

Guarantee of legal certainty as the purpose of land registration, including:

a. Certainty of registered rights status

This means that by registering the land, it will be known with certainty the status that is registered, for example property rights, business use rights, building use rights, usufructuary rights, management rights, mortgage rights, ownership rights to flats or waqf land.

b. Certainty of the subject of rights

This means that by registering land, it will be possible to know with certainty the holder of the rights, whether an individual (Indonesian citizen or foreigner domiciled in Indonesia), a group of people together or a legal entity (private legal entity or public legal entity).

c. Certainty of the object of rights

This means that with land registration it will be possible to know with certainty the location of the land, the boundaries of the land and the size (area) of the land. The location of the land is on the road, sub-district/village, sub-district, district /which city and province. Land boundaries include the north, south, east and west bordering whose land or what land. The size (area) of the land in square meters.

In order to guarantee legal certainty and legal protection in land registration, the holder concerned is given a certificate as proof of his rights. A certificate of land rights is a proof of legal ownership of land as determined by law. By looking at the provisions of Article 19 of the UUPA it is known that the result of land registration is the issuance of a certificate of land rights which functions as strong proof of ownership of rights.

The word "strong" in relation to the negative system means "not absolute" which means that the land certificate may still be annulled as long as there is evidence to the contrary stating the invalidity of the land certificate. Thus the land title certificate is not the only proof of the holder of land rights and therefore there is still other evidence about the holder of land rights, including proof of sale and purchase of customary land or certificate of customary ownership rights (Effendie; 2008; 77).

Land certificates have a double side, namely on one side as a State Administrative Decree (KTUN) and on the other hand as proof of civil rights (ownership) of a person or legal entity over land, so that if there is a dispute regarding multiple/overlapping certificates, the settlement can be reached through two courts, namely regarding the issue of issuance of a certificate as a product of the National Land Agency, a request for cancellation can be made through the Administrative Court, while regarding the issue of a certificate as proof of ownership of a person/legal entity over land, a valid or not valid proof of ownership can be requested through the District Court.

In the case of the issuance of multiple certificates, the right holder is entitled to legal protection as stipulated in Article 19 paragraph (2) letter c that

registration produces proof documents that are valid as a strong means of proof. In Article 23 paragraph (2), Article 32 paragraph (2) and Article 38 paragraph (2) of the Basic Agrarian Law it is stated that registration of various legal events is a strong means of proof, Government Regulation Number 24 of 1997, that certificates Proof of right is valid as a strong evidentiary tool. Apart from that, from the provisions regarding the procedures for collecting, processing, storing and presenting physical data and juridical data as well as issuing certificates in this government regulation, it is clear that efforts are made to obtain and present correct data as far as possible, because land registration is to guarantee legal certainty. . This means that as long as the contrary cannot be proven, the data presented in the land book and registration map must be accepted as correct data, as well as those contained in the title certificate. So the data as strong evidence.

The holder of land rights which is the object of the dispute does not get legal protection after the decision to revoke the land certificate because it adheres to a publication system in land registration, namely a negative (not absolute) publication system which contains positive elements. In a negative publication system, not registration but the legality of the legal actions taken determines the transfer of rights to the buyer. Registration of rights does not make people who acquire land from unauthorized parties become the new rights holders.

Efforts that must be made to guarantee legal certainty in the land sector are carried out by the Government, in this case the State Ministry of Agrarian Affairs and Spatial Planning, in issuing certificates of land rights, must be based on the principle of legal certainty, the principle of accuracy and the principle of security to ensure the legal force and legal certainty of the certificate issued. .

Based on the principle of openness, it is mandatory for people who own land to maintain, both juridical data in the form of if there is a transfer of rights, encumbrance of rights or something else, it must be immediately registered with the Government (state ministry of agrarian and spatial planning) and if it concerns physical data, it is required to know where the location is. owned land, know the boundaries of the land. This means that synergy is required between the government and the community to guarantee and maintain the certainty and legal force of certificates of land rights.

The legal strength of a certificate of land rights is a guarantee of legal certainty from a certificate as proof of ownership which is strong, meaning as long as it is not proven otherwise by other parties who feel entitled and have evidence to prove it, in this case the certificate has material legal certainty (negative publication). positive elements) which are adhered to in national land law, but on the other hand certificates also have valid legal certainty formal nature (positive publication), namely the legal certainty of a certificate containing written provisions contained in laws or other regulations is absolute, meaning it cannot be contested.

Several things can weaken the legal force of certificates of land rights when viewed from the certainty and formal legal force (positive publication), namely

the use of a negative publication system, the weak implementation of Article 32 paragraph (2) of Government Regulation Number 24 of 1997 and the overlap between Laws Law on Land with legal principles in court. However, it is also necessary to note that a certificate of land rights is not the only proof of ownership of land rights, because to find out the real owner of the land, it is not only a certificate that can be used as proof of ownership or as evidence in court, but other evidence can also be used as evidence. ownership of land rights including Girik and land receipts whose veracity can be proven in court.

Especially with the issuance of multiple certificates, namely a plot of land that has more than one certificate with the same object. A plot of land with multiple certificates can result in legal uncertainty for parties holding land rights, which is certainly not expected in land registration in Indonesia. Cases of multiple certificates still occur frequently in several regions in Indonesia which results in holders of land certificates accusing each other that the certificates they have are true despite the fact that one of the double certificates is fake where the object stated on the certificate is not the real one. , so that in order to obtain legal certainty regarding certificates of land rights, one of the dual certificate holders made a complaint to the National Land Agency as the agency authorized in the land sector. If the verification process through the National Land Agency does not come to an end, the authority to prove multiple certificates of land rights will continue to the realm of the Court which is deemed to have competence in providing legal certainty to the right holders and canceling one of the certificates so that only one certificate has the object and the other is not an object stated in the certificate.

The factors causing the issuance of multiple certificates originated from the granting of new rights by the Land Office based on the adjudication process. Adjudication, namely activities carried out within the framework of the land registration process for the first time, includes the collection and determination of physical data and juridical data regarding one or several objects of land registration for the purpose of registration. This adjudication process was carried out in an inaccurate and inaccurate manner, resulting in the issuance of multiple certificates.

The procedure for issuing land certificates is the application for registration for the first time by the applicant by bringing a letter of release of customary land, the applicant's KTP, family card, certificate of physical mastery (Sporadic), certificate of location and the applicant and the application letter addressed to the BPN Office. After the officer examines the file, it is then handed over to the treasurer for payment of the administration of certification and after payment an invitation is made for measurement. After the measurement is carried out and the results are in the form of a measurement letter and then submitted to the Committee or the inspection section. After it has been inspected and there are no problems, then the announcement is continued for 60 days. If there are no objections during these 60 days, the Kelurahan Head makes an official report on

the ratification of the announcement to the Land Office. Based on the minutes of the event, a certificate is issued to the applicant.

If there is a dispute regarding the issuance of multiple certificates, the National Land Agency will conduct research on the history of the land and its designation and with a court decision, the Land Agency must cancel one of the certificates.

The factors that cause the issuance of multiple certificates are:

1. Internal Factors

a. The non-implementation of the Basic Agrarian Law and its implementing regulations in an honest, fair and responsible manner considering that there are individuals who act solely for personal gain.

b. Inadequate supervision which results in the creation of opportunities for subordinate officials to act that are not in accordance with their duties and responsibilities.

c. Unavailability of land registration maps.

d. Officials of the Land Office are not thorough in issuing land certificates, namely the documents as the basis for issuing certificates are not examined carefully, which may mean that these documents do not meet the requirements as determined by law.

2. External Factors

a. There is still a lack of public knowledge terha dap laws and regulations on land in particular the procedure for issuing certificates.

b. The availability of land that is not proportional to the demand for the land itself.

c. The high rate of development has resulted in the need for land increasing, resulting in an increase in land prices.

d. During field measurements or research, the applicant intentionally or unintentionally indicated the wrong land location and boundaries.

e. There is a letter of evidence or acknowledgment of rights later that contains untruth, is fake or is no longer valid.

f. There was a special misunderstanding within the inherited land.

The emergence of the double certificate case has added to the polemic for the National Land Agency as the agency authorized to issue certificates of land rights, the public's trust in certificates which are perfect evidence has become very lacking and worrying so that investors and developers to land users must be careful in buying land. .

Therefore, when you want to buy land, don't trust a seller too easily, even if you have a legal basis in the form of a certificate, before tracing the truth of the

certificate, because it is possible that the certificate owned by the seller can also be found in other people, in this case two identical certificates with the same object appear. as well as the same name it's just a different publication time.

Multiple certificates with the same object and the same name, but at the time of issuance it often occurs, that someone who has sold his land to another person on the basis of the right in the form of a certificate, which then along with the high demand for land, the bad faith then appears to the seller with the intention is to resell the land to another person who is not the first buyer by requesting a certificate of loss from the police, which is used as the basis for issuing a new certificate, considering that the first buyer has not changed the certificate he bought and has not used the land. After the certificate has been reissued, this second certificate becomes the basis for the right to sell to another person, resulting in a second transaction which results in the existence of two certificates with the same object and the same name.

Efforts to prevent the emergence of multiple certificates are through the Land Registration Map Procurement program carried out by the National Land Agency. However, the procurement of land registration maps requires funds and time, so the procurement is carried out in stages using a village-by-village measurement approach.

4. Conclusion

Legal protection for holders of land rights, namely the registration of various legal events is a strong means of proof, letters of proof of rights are valid as a strong means of proof. Apart from that, from the provisions regarding the procedures for collecting, processing, storing and presenting physical data and juridical data as well as issuance of certificates in regulations, it is clear that efforts are made to obtain and present correct data as far as possible, because land registration is to guarantee legal certainty. This means that as long as the contrary cannot be proven, the data presented in the land book and registration map must be accepted as correct data, as well as those contained in the title certificate. So the data as strong evidence.

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