

Legal Protection for Land Right Holders in the Event of Multiple Certificates

Ibnu Arly¹, Rinda Sara Afrilia²

¹Faculty of Law, Universitas Narotama, Surabaya, Indonesia

²Master of Notary Study Program, Faculty of Law, Universitas Narotama, Surabaya, Indonesia

ibnu_arly@yahoo.com, rindasara30@gmail.com

Abstract

Land is the object that is most easily affected by disputes, whether disputes between individuals, individual disputes with legal entities, disputes between legal entities, even disputes involving the government, so that legal arrangements related to the control / granting of land rights must be maximized to ensure the protection of holders of land rights. In Government Regulation Number 24 of 1997 concerning Land Registration and as the basis for implementing regulations, PMA / Head of BPN Number 3 of 1997 concerning Provisions for Implementing Government Regulation Number 24 of 1997 concerning Land Registration are used. The implementation of land registration at the Land Office has fulfilled the principle of security as a form of embodiment of guarantees of legal certainty for holders of land rights. The form of the principle of security exists, both at the time of the implementation of the land registration itself and when a certificate has been issued, with the issuance of a certificate, the security guarantee for land rights has been attached to the holder of the land rights. The system used in land registration uses a negative system with a positive tendency, which means that the application of positive elements is also included in the negative system, so that a certificate can become the strongest and fullest right. Strength of proof against Land Office product certificates that have complied with the provisions of Article 32 of Government Regulation Number 24 of 1997. In Indonesia, land rights certificates act as strong evidence as confirmed in Article 19 paragraph (2) letter c of the UUPA and Article 32 paragraph (1) Government Regulation Number 24 of 1997 concerning land registration, which has now been revoked and reaffirmed in Government Regulation Number 24 of 1997.

Keywords

land rights holders; multiple certificates; legal protection



I. Introduction

Land is something that has a very important value in people's lives. Not only land for living, but also can be a place of community livelihood directly or indirectly. Land is a factor of production that is needed in producing all other goods so that it can be said that land is the source of all other wealth. Land is a natural resource that gives life to human resources. Land rights are rights to control a plot of land which can be granted to individuals, groups of people, or legal entities. There are various types of land rights, for example: 1) certificate of ownership, 2) certificate of right to cultivate, 3) certificate of right to build on state land, 4) certificate of right to build, 5) certificate of right to use state land, 6) certificate of right of use on land with management rights, 7) certificate of land management rights, 8) certificate of waqf land, 9) certificate of ownership of flat units, 10) certificate of mortgage. The rights which are not issued with certificates are: 1) right to use the building on the right of

ownership, 2) the right to use the land with the right of ownership, 3) the right to rent for the building. Land serves to provide protection so that land can be a means for the people to achieve a decent living in accordance with the provisions in Article 27 paragraph (2) of the 1945 Constitution. The definition of the type of certificate is:

1. Certificate of Ownership

Article 20 paragraphs 1 and 2, explicitly regulates property rights, namely, property rights are hereditary, strongest and fullest rights that can be owned by people on land keeping in mind the provisions in article 6, property rights can be transferred and transferred to other people. (Tabuni, Octavian 2015).

2. Cultivation Rights Certificates

Rights are new land rights, which were previously unknown to the public, and have no similarities with any of the land rights in customary law. This right to cultivate is a new creation in the UUPA, held because it is to meet the needs of today's society. The maximum term of the right of cultivation certificate is 35 years for the first time borrowing (Ali, Apriyadi 2016).

3. Certificate of Right to Build

Certificate of right to build on state land and management of right to build is the right to construct and own a building on land and not one's own with a predetermined period of not more than 30 years.

(Roestandi Ardiwilaga, SH. 1987) this is in accordance with article 35 paragraph 1 of the main agrarian law. Right to build certificate consists of 2 parts, certificate of right to build on state land and land with management rights.

4. Certificate of Right of Use on State Land

Certificate of right of use on state land is the right to use or collect proceeds from land which is directly controlled by the state / land on the ownership of others. The method of obtaining the right of use is regulated in the provisions of PP no. 40 of 1996 article 27 of the bill, regarding resources.

5. Land use rights certificates with management rights

The occurrence of land use rights with management rights is through a decision on granting rights by the minister or an appointed official based on the proposal of the management right holder. The term of the right to use land, the right of management is granted for a maximum of 25 years and can be extended for an indefinite period as long as the land is used for certain purposes.

6. Land Certificate Management Rights Management

Rights are rights to control over land from the state whose implementation authority is delegated to the holder. Land management rights can be given to other parties, one of which is through the right to build (rangga dwi prastyana, 2012).

7. Waqf Land Certificate

Definition of waqf according to the provisions of Article 1 paragraph (1) PP 28/1977 is a legal act waqf of a person or legal entity that separates part of his assets in the form of property and symbolizes it forever for the benefit of his personality or other public purposes in accordance with Islamic religious teachings.

The legal basis for waqf property can be found in Article 49 paragraph (3) of Law no. 5 of 1960, concerning the basic agrarian regulations (hereinafter referred to as UUPA) which stipulates that the endowment of owned land is protected and regulated by government regulations referred to in these provisions is government regulation no. 28 of 1977 concerning the waqf of owned land (hereinafter referred to as PP 28/1977).

For the realization of a just and prosperous society must pay attention to several main things, namely human resources as members of the community who will manage existing natural resources, and natural resources (Earth, water, space and natural resources contained therein which is called agrarian in the broadest sense. One of the efforts made to realize these ideals is the regulation of land ownership, both in the control and use for the sake of order among the members of the community.

The land issue is a strategic problem related to social, economic, political and cultural factors, which must be handled immediately because it can cause many conflicts of interest that result in problems in the land sector. Land disputes and conflicts are complex and multidimensional problems (Isnaini, 2020). Land is the object that is most easily affected by disputes, both disputes between individuals, individual disputes with legal entities, disputes between legal entities, and even disputes involving the government, so that the regulationThe law related to the control / granting of land rights must be maximized to ensure the protection of the holders of land rights. In general, land area has a direct effect on production, if land area increases, it will automatically increase production (Hasibuan, 2020).

Various kinds of problems, one of which is about dual certificates which until now there has been no resolution at the BPN level or the state administrative court. The government in ensuring legal certainty in the field of land tenure and ownership makes the certainty of the location of the boundaries of each land parcel as a major factor and priority that cannot be ignored. From past experience, quite a lot of land disputes that arise as a result of the location and boundaries of land parcels are not correct. Therefore, the problem of measuring and mapping as well as providing large-scale maps for the purpose of carrying out land registration is something that should not be ignored and is an important part that needs serious and careful attention, not only in the context of collecting land tenure data but also in studying tenure data. or land ownership and data storage. In the basic agrarian law, there is never mention of a land certificate, but as found in Article 19 paragraph 2 letter C, there is a mention of "a certificate of proof of rights". In the everyday sense, this certificate of proof of rights is often interpreted as a land title certificate.

Although the main function of land rights certificates is as evidence, land certificates are 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. Certificates as evidence are very important, for example in terms of transfer of rights and legal acts of transfer of rights aimed at transferring land rights to other parties (who meet the requirements as rights holders), in the form of: buying and selling land, exchanging, grants or will grants and others. But unfortunately, the problem of land certificates still exists and comes up again with different problems. A plot of land that has dual certificates emerged and became a bitter root for the existing land law in Indonesia. For this reason, based on the description above, it is hoped that this thesis will be able to further explore what a land certificate is, how to get a dual certificate and what is the solution from the authorities in this case at BPN. Human legal relations with land are concreted through land rights institutions. Legal certainty of land rights is the starting point for handling and managing land issues so that the land itself has a productive value for the life of the land-owning community.

II. Research Methods

This research uses the type of empirical normative research. The normative type of research is a type of research that emphasizes the study of legal science and tries to emphasize the applicable legal rules in relation to the position of land. In addition, empirical research is the study of legal science to find/analyze the facts that occur in society, especially in the city. Surabaya. That has been collected is processed systematically and then a qualitative descriptive analysis is carried out, namely researching, examining the existing data in the form of a logical and systematic description to answer the existing problem formulation.

III. Discussion

Causes of Disputes and Double Certificates

3.1 Concept of Land Rights

Rights Land rights based on Article 16 paragraph (1) of the BAL consist of:

- a. property rights
- b. Cultivation rights
- c. Right to use building
- d. Right to use
- e. Rental rights
- f. Right to clear land
- g. Right to collect forest products
- h. Other rights that are not included in the distribution of these rights and will be stipulated by law.

Soedharyo Soimin (2001:1) states that, when viewed from the urgent and urgent interests needed by humans or legal entities, land rights can be distinguished into property rights, use rights, building rights and business use rights.

In line with this opinion, AP Protection (1998: 13), states that:

“Basically, land rights only consist of property rights, usufructuary rights, building rights and usufructuary rights. However, based on the UUPA, this right can be added with the right to collect results and the right to clear land.”

One of the rights to land that is often the basis of disputes in court is disputes over land ownership rights. Juridically, property rights are regulated in Article 20 paragraphs (1) & (2) of the LoGA which confirms that, property rights are hereditary, strongest and fullest rights that can be owned by people on land by keeping in mind the provisions in Article 6 of the LoGA, and this right can be transferred. and transferred to another party.

In connection with this understanding, Soedharyo Soimin (1993: 1) said that, property rights are rights that can be inherited from generation to generation, continuously without having to ask for their rights back in the event of a transfer of rights.

Furthermore, AP Parlindungan (1998: 137) asserts that, the elements of property rights:

a. Hereditary

That property rights can be passed on to other parties or heirs if the owner dies without having to reapply for the heirs to obtain a determination.

b. Strongest and Fullest

This means that property rights are the strongest and most complete rights owned by a person, which can be distinguished from other rights such as cultivation rights, building rights and usage rights, that among the rights to land, his absolute rights are not limited and inviolable, but still has a social function.

c. Social Function

Meaning is that although property rights are the strongest and most complete, they still have social functions, which if this right is needed for the public interest, the owner must hand it over to the state by getting proper compensation.

d. Can be Transferred and Transferred Ownership

Rights can be transferred to other parties in accordance with applicable laws and regulations either through sales, delivery, grants or even through mortgages. If we listen to Article 21 paragraphs (1), (2) and (3) of the UUPA, it can be seen that only Indonesian citizens are entitled to obtain property rights; by the government established legal entities that can have property rights with the conditions that have been set; Foreigners to whom this law has come into force obtain property rights due to inheritance without a will or mixing of assets.

Property rights to land that occur due to the provisions of conversion (change) according to the BAL. Since the enactment of the LoGA on September 24, 1960, all existing land rights must be converted into one of the land rights regulated in the basic agrarian law. What is meant by conversion is a change in land rights in connection with the enactment of the UUPA. Land rights that existed before the enactment of the LoGA were changed to land rights stipulated in the LoGA. (AP Parlindungan, 1998: 140)

3.2 Dual Certificate Reference

Siahaan's research (2009) with the title "the responsibility of the land office due to the issuance of multiple certificates containing administrative legal defects". The results showed that the occurrence of double certificates was the result of the negligence of officers in the process of granting and registering land rights due to lack of supervision and control over a land policy that had been issued, bad faith from the applicant who intentionally or unintentionally pointed to incorrect boundaries. As a follow-up to the resolution of the dual certificate dispute, the parties sued to the state administrative court to check the validity of their respective rights certificates as well as sanctions in the form of sanctions, namely dismissal of officers who are negligent in carrying out the duties and obligations of the official on duty, civil sanctions, namely compensation. in articles 1365 and 1366 of the Civil Code by compensating the parties for losses, and criminal sanctions, namely imprisonment for officials or one of the parties found guilty in court as a deterrent effect.

Sulaiman's research (2012) with the title "legal certainty guarantees for land certificate holders against the issuance of multiple certificates and non-litigation dispute resolution in Gresik Regency". The results of the study indicate that legal guarantees and legal certainty of ownership rights to land in the form of certificates have not been able to provide a sense of security for the general public in Indonesia, disputes over ownership of property rights occur because of the issuance of double certificates and with the issuance of these double certificates, people do not trust and give the impression of how evidence in the form of a certificate does not guarantee the strength of a person's right to land, this also proves that the letter of title in the form of a certificate and land registration has not been able to provide a solution to the current land dispute.

3.3 Causes of Disputes and Multiple Certificates

Land issues have now penetrated into complex social problems and require solutions with a comprehensive approach. The development of the nature and substance of land dispute cases is no longer only a question of land administration that can be resolved through administrative law, but the complexity of the land has penetrated into the political, social, cultural realms and is related to issues of nationalism and human rights. Not a few victims who fell because of questioning or defending just a few squares of land. From year to year, the number of cases in the land sector in Indonesia continues to increase. In just 2 years, the number of land cases reported by the BPN of the Republic of Indonesia was approximately five thousand cases.

There is also one of the causes of land disputes and certificates that we often forget is natural disasters that cause letters of evidence of land rights to be lost or damaged.

In Dual Certificates, what needs to be considered is the case, because it can be caused by various things, so it can be concluded that most of the causes for the emergence of Dual Certificates are:

1. The fault of the land owner himself who did not pay attention to his land and did not use it properly so it was taken over by other people and then used because they feel that the land has no owner or no owner. Because he felt that he had controlled the land for a long time, the person then claimed that the land was his and issued a certificate on the land without knowing that there was already a certificate on the land, or During measurements or field research, the applicant intentionally or unintentionally indicated the location of the land. wrong land and land boundaries, as well as the intentional existence of land owners to re-register existing certificates by exploiting the weaknesses of the National Land Agency because they feel that making new certificates is easier and cheaper than transferring land rights.
2. Furthermore, from the National Land Agency because there is no database on land parcels, both registered and unregistered. Lands registered with the Land Office should be recorded and written off on registration maps, so that if the land is registered again, it can be known whether the land has been certified or not. So, the existing data is not yet systematic, although now there have been improvements, but there are still many old certificates that are not imparted so that it is possible to create multiple certificates because the land agency only needs to accept applications. Or because of the carelessness of the Land Office Officials in issuing land certificates, besides there are still people who act for personal gain so that they act deviantly in the sense of not carrying out their duties and responsibilities.
3. Then the factor of the local government, kelurahan or village that does not have data on land that has been certified and already has control or data that is not valid. If there are people who ask to make a land tenure certificate which is then issued, it continues suddenly because someone with bad intentions comes claiming to own the land and wants to make a land tenure certificate. The local government makes it and sometimes they don't take measurements, don't check the location whether the land is really the land or the land has not been registered in someone else's name. Or For the area concerned, the land registration map is not yet available so that it is easier for someone who has bad intentions to duplicate his certificate. Furthermore, there is a letter of evidence or complaint of rights which is proven to contain untruth, falsehood, or is no longer valid.

3.4 Legal Consequences of Having Double Certificates of Land Rights

Legal consequences of having dual certificates are that it does not provide legal certainty, because the purpose of someone doing land registration is to obtain a certificate as a perfect means of proof. However, with the emergence of multiple certificates, it creates legal uncertainty in terms of land registration. It is said that it does not provide legal certainty because there are no two legal statuses on one land. The existence of multiple certificates can cause public distrust of the legal certainty of land rights, in this case distrust of certificates. Because the certificate of land rights should be a strong proof of ownership of land rights, but how can it be said to be strong if there are two certificates with the same land object, which one is considered strong which can guarantee legal certainty of land rights. The next impact is the loss of meaning someone hopes to get legal status on his land but because of the existence of a double certificate and then it is declared defeated in the trial with the consequence that the certificate is declared void, the person automatically suffers a loss because what about the land registration process costs money, especially if the land is large and most likely on the land will be built a business or a place to earn a living. Not to mention the court fees that must be paid by the Defendant as the losing party in the trial. In addition, it is said to cause losses because the land in litigation will be very difficult to sell and even if it is possible the selling price of the land will be low, especially considering that in the previous case the Plaintiff intended to sell the land but from the results of the re-measurement of the location, the Plaintiff was surprised that it was based on the news. The event is known if on the land owned by the Plaintiff there are certificates of other people. So, with the dual certificate, the Plaintiff felt disadvantaged because he could not buy and sell or transfer the land because the status of the land was in a case.

So, with the Court Decision which has permanent legal force (*inkracht van gewijsde*), the National Land Agency in this case the Defendant as the Agency responsible for the issuance of double certificates due to errors or omissions he has committed must revoke or cancel the certificate declared void by the Court. State Administration.

3.5 Overview of Counterfeit Certificates and Dual Certificates

a. Fake Certificate

Counterfeit certificates are certifying whose manufacturing data is fake or falsified, the signature of the head of the district/municipality land office is falsified and the form used for making the certificate is a fake or non-blank form issued by the national land agency (Chomzah, 2002: 136). Based on this understanding, there are 2 types of fake land certificates:

- a. False certificates, the meaning is in accordance with the above understanding that all information from blanks, data and signatures are falsified.
- b. Original or fake certificate, the meaning is only as a statement of the blank, falsified data or signature.

b. Dual Certificate

Dual Certificate are certificates that describe the same parcel of land. Thus, one plot of land is described with two or more certificates with different data. This kind of thing is also called overlapping certificates, either overlapping the entire field or overlapping part of the land.

Double certificates often occur in areas that are still empty, not yet developed and in urban border areas where there are no maps for land registration. There are several factors - factors for the occurrence of double certificates (Chomzah, 2002: 140 – 141) 41)

- a. When measurements are made in the field, the applicant intentionally or unintentionally points to the wrong location of the land and boundaries.

- b. The existence of a letter of evidence or acknowledgment of rights has been proven to contain untruth, falsehood or is no longer valid
- c. For the area concerned, the land registration map is not yet available.

3.6 Efforts to Minimize Counterfeit Certificates and Double Certificates

To prevent the emergence of multiple certificates, the national land agency has programmed the procurement of land registration maps. However, keeping in mind that the procurement of this land map requires funds and time, so the procurement is carried out in stages through a village-by-village measurement approach, as stated in PP no. 10 of 1961 dated March 23, 1961, concerning land registration.

While waiting for a decision that has permanent legal force, the evidence provided in the form of a land title certificate is said to be a strong means of proof, this means that the information contained in the certificate has legal force and must be accepted as a valid statement. true by the judge as long as it cannot be proven otherwise by the other party. If the other party can prove otherwise, the authority to decide which means of proof is the court (Sumarjono, 92: 26).

Based on the results of an interview with the Head of Land Rights and Land Registration, Abdul Razak (Interview, 23 April 2010) explained:

"To obtain the physical data needed for land registration, the plots of land to be mapped are measured, after determining their location, boundaries and according to the need, boundary markings are placed in every corner of the land parcel in question."

In determining the boundaries of land parcels for systematic land registration and sporadic land registration, efforts are made to arrange boundaries based on the agreement of the parties concerned. Placement of boundary markings including their maintenance must be carried out by the holder of the land rights concerned. (Article 15 of Government Regulation Number 24 of 1997).

Determination of boundaries of land parcels that are already owned with a right that has not been registered or which has been registered but there is no certificate of measurement/ the picture of the situation or the letter of measurement/drawing of the existing situation is no longer in accordance with the actual situation, carried out by the Adjudication Committee in systematic land registration or by the Head of the Land Office in sporadic land registration, based on the designation of boundaries by the holder of the land rights concerned and to the extent possible. may be approved by adjacent land rights holders.

Based on the results of an interview with the Head of the Kendari City Land Office, La Ode Muh. Ruslan Emba (Interview, 23 April 2010) stated:

"In determining the boundaries of the land parcels, the Adjudication Committee or the Head of the Land Office pays attention to the boundaries of the registered land parcels or parcels and the letter of measurement or picture of the situation in question. Land parcels whose boundaries have been determined, are measured and then mapped in the registration base map."

The land parcels or parcels that have been mapped or have their registration number affixed on the registration map are recorded in the land register. For parcels of land that have been regulated and mapped out in the registration map, a letter of measurement is made for the purpose of registering their rights.

For the purposes of registration of rights:

Rights to new land are proven by:

1. Determination of the granting of rights from the official who is authorized to grant the relevant rights according to the applicable provisions if the granting of such rights originates from State land or land with management rights.
2. The original PPAT deed which contains the granting of the right by the holder of the property right to the recipient of the right in question when it concerns the right to use the building and the right to use the land with the right of ownership;
 - a. Management rights are proven by the stipulation of granting management rights by the authorized official;
 - b. Waqf land is evidenced by a waqf pledge deed;
 - c. Ownership of the apartment unit is proven by a deed of separation;
 - d. The granting of the mortgage is proven by the deed of granting the mortgage.

The Head of Subsidy for Registration and Transfer of Land Rights at the Kendari City Land Office, Edison S (Interview, 23 April 2010) explained that:

"For the purposes of registration of rights, land rights originating from the conversion of old rights are proven by evidence regarding the existence of land rights. the right in the form of written evidence, witness statements and or statements in question, the truth of which by the Adjudication Committee in systematic land registration or by the Head of the Land Office in sporadic land registration, is deemed sufficient to register rights, rights holders and the rights of other parties. another who burdens him."

The list of fields and maps of the land parcels or parcels concerned as a result of the measurement are announced within 30 (thirty) days in systematic land registration or 60 (sixty) days in sporadic land registration to provide opportunities for parties who interested in filing an objection.

The head of the Kendari City Land Office, La Ode Muh. Ruslan Emba (Interview, 23 April 2010) explained that:

"An announcement is made at the Office of the Adjudication Committee and the Office of the Village/Kelurahan Head of the location of the land concerned in systematic land registration or at the land office and the office of the village/kelurahan head where the land is concerned in registration. sporadically and in other places deemed necessary. In addition to announcements, in the case of individual sporadic land registrations, announcements can be made through the mass media."

Within the period of the announcement, there were those who raised objections regarding the physical data and/or juridical data that were announced, the Head of the Adjudication Committee in systematic land registration or the Head of the Land Office in Sporadic land registration shall endeavor that as soon as possible the objections raised are resolved by deliberation to reach consensus or through the courts. (Article 30 of Government Regulation Number 24 of 1997)

After the announcement period ends, the physical data and juridical data announced by the Adjudication Committee in systematic land registration or by the Head of the Land Office in sporadic land registration shall be ratified by an official report.

The bookkeeping in the land book and its recording in the measuring document is evidence that the rights concerned and the holder of the rights and the plot of land described

in the measuring letter are legally registered. (Article 29 of Government Regulation Number 24 of 1997)

After all these activities, a certificate is issued for the benefit of the right holder concerned in accordance with the physical data and juridical data that have been registered in the land book as referred to above.

Land registration as one of a series of activities carried out by the government on an ongoing and regular basis in the context of providing certificates as proof of rights for parcels of land that already have rights and ownership rights to flat units and certain rights that burden it. The land registration process carried out by the Surabaya City Land Office (Ajudikasi Committee) has been carried out in accordance with the procedures mandated in Government Regulation No. 24 of 1997 concerning Land Registration.

IV. Conclusion

The land registration process carried out by the Surabaya City Land Office has been carried out in accordance with the procedures mandated in Government Regulation No. 24 of 1997 concerning Land Registration. Based on the results of the study, it can be concluded as follows:

1. Factors that cause the issuance of dual certificates of land rights by the land office
 - a. Factors from the land office include: 1. Not being careful and not careful in conducting an investigation of the history of land parcels and mapping the boundaries of land ownership in the context of issuing certificates of objects of dispute.
 - b. The factor of the owner is that the land owners do not provide boundary markers for the parcels of land they control as regulated in PP RI No. 24 of 1997 article 17 paragraph 3, giving rise to cases of overlapping land tenure/double certificates.
2. Legal protection for land rights holders when there is a double certificate issuance.
 - a. The rights holders, namely the plaintiffs, get legal protection as per government regulation no 24 of 1997, and article 9 paragraph c, article 23 paragraph (2), article 32 paragraph (2) and article 38 paragraph (2) of the UUPA, proof of rights acts as a strong evidence.
 - c. Holders of land rights who are the object of dispute do not get legal protection after the decision to revoke the land certificate is due to linking the publication system in land registration, namely a negative publication system that contains positive elements.

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