

Settlement of Double Certificate Cases in Bandung (Case Study of Judge's Decision Number: 976k/Pdt/2015)

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Abstract

One of the objectives of the Basic Agrarian Law (UUPA) is to provide legal certainty for all people and enable the functioning of earth, air, and space, as well as natural wealth that aspired. However, the Basic Agrarian Law (UUPA) has not provided legal certainty over land, one of which is a plot of land with more than one certificate with the same object. The factors causing the occurrence of multiple certificates are caused by the community and the government from the National Land Agency, which does not have a valid database as referred to by Supreme Court Decision Number 976 K/PDT/2015. The formulation of the problem in this research is how efforts to prevent the occurrence of multiple certificates (overlapping) and what are the obstacles in preventing their occurrence double certificate (overlapping). This research aims to determine and analyze the prevention efforts and constraints in preventing the occurrence of double certificates (overlapping). The problems in this study were studied using a normative juridical method using a statutory approach and a conceptual approach—data collection techniques using studies bibliography and assistance and defense of legal facts. According to the research findings, efforts to prevent the occurrence of double certificates (overlapping), specifically by optimizing administration land use and creating land registration maps, so that if there are indications of the occurrence of double certificates, they can be canceled as soon as possible, as well as obstacles in preventing double certificates (Overlapping), specifically the lack of understanding and enthusiasm from the community in applying for their land in Complete Systematic Land Registration (*Pendaftaran Tanah Sistematis Lengkap*, PTSL), are shown.

Keywords: Double certificate; legal certainty; overlapping.

Abstrak

Salah satu tujuan Undang-Undang Pokok Agraria (UUPA) yaitu memberikan kepastian hukum bagi semua orang dan memungkinkan berfungsinya bumi, air, dan ruang angkasa, serta kekayaan alam sebagaimana yang dicita-citakan tersebut. Namun pada nyatanya, Undang-Undang Pokok Agraria (UUPA) belum memberikan kepastian hukum atas tanah salah satunya yaitu sebidang tanah yang memiliki lebih dari satu sertipikat dengan objek yang sama. Faktor penyebab terjadinya sertipikat ganda disebabkan baik dari pihak masyarakat maupun dari pihak Badan Pertanahan Nasional yang tidak memiliki database yang valid sebagaimana berdasarkan Putusan Mahkamah Agung Nomor 976 K/PDT/2015. Rumusan masalah dalam penelitian ini yaitu bagaimana upaya dalam mencegah terjadinya sertipikat ganda (Overlapping) dan apa kendala dalam mencegah terjadinya sertipikat ganda (Overlapping). Tujuan penelitian ini adalah untuk mengetahui dan menganalisis upaya dalam mencegah terjadinya sertipikat ganda (Overlapping) dan juga untuk mengetahui dan menganalisis kendala dalam mencegah terjadinya sertipikat ganda (Overlapping). Permasalahan dalam penelitian ini dikaji menggunakan metode yuridis normatif dengan menggunakan pendekatan perundang-undangan (*statute approach*) dan pendekatan konseptual (*conceptual approach*). Teknik pengumpulan data menggunakan studi kepustakaan dan identifikasi dan klarifikasi fakta hukum. Berdasarkan hasil penelitian menunjukkan bahwa upaya dalam mencegah terjadinya sertipikat ganda (Overlapping) yaitu dengan mengoptimalkan administrasi pertanahan dan pembuatan peta pendaftaran tanah, sehingga apabila terindikasi terjadinya sertipikat ganda dapat segera dilakukan pembatalan sedini mungkin, serta kendala dalam mencegah sertipikat ganda (Overlapping) yaitu kurangnya pemahaman dan antusias dari masyarakat dalam mendaftarkan tanah miliknya pada program PTSL dan juga kesalahan pada saat pengukuran yang tidak sesuai dengan prosedur seperti tidak adanya pemilik tanah pada saat pengukuran tanah.

Kata kunci: Kepastian Hukum; Sertipikat ganda; Overlapping.

Introduction

Indonesia is one of the developing nations that continue to develop in a variety of areas, particularly in facilities and infrastructure as the Indonesian government continues to carry out the construction of facilities and infrastructure between the years 2020 and 2024 because it is the basis for Indonesia to compete with other nations. Development in Indonesia should be a process of "humanizing" people to achieve the aim of a just and prosperous Indonesia (BPN, 2020).

The land is one of the most absolute and essential human necessities, which means that it impacts and determines the course of human life. It is challenging for humans to live since they cannot exist in a world without land. While other factors also impact various aspects of human life on the planet, it is even exaggeratedly claimed that humans cannot survive without land. Being in contact with land for most human activity and life makes land a particularly strategic location and a basic need (Hartanto, 2019). Relating to land law is the 1945 Constitution of the Republic of Indonesia Article 33 paragraph (3) explains that: "The land and waters and the natural wealth contained in it shall be controlled by the state and utilized for the optimal welfare of the people." According to the Article, the land is a part of the natural resources that the government controls. The Basic Agrarian Law (UUPA), which establishes unity and simplicity in land law as one of its goals, regulates the fundamentals of Indonesian land law (Hanggara, 2013).

The Basic Agricultural Legislation (*Undang-Undang Pokok Agraria*, UUPA) aims to create a national agrarian law that may guarantee legal certainty for all people and permit the proper functioning of the land, water, space, and natural resources. However, the Basic Agrarian Law (UUPA) has not given legal certainty over land, including a piece of land with double certificates for the same object (Harsono, 1992). Double certificates (*overlapping*) result from several factors, including the lack of a legitimate database at the National Land Agency and the lack of input from specific parties, which results in an incorrect database (Syah, 2014). The frequent occurrence of double certificates across many regions of Indonesia leads holders of land certificates to accuse one another of holding valid certificates.

The initial survey that the authors conducted was regarding the Supreme Court Decision Number: 976 K/PDT/2015 regarding the dispute over double certificates that the Cassation Appellant sued, formerly Plaintiff/Appellant (Liem Teddy), Defendant I (Department of Defense and Security), Defendant II (National Land Agency/BPN), Co-Defendant I (PT.Propelat), Co-Defendant II

(Government of the Republic of Indonesia) as in 2006 the Plaintiff bought a plot of land on Co-Defendant I which is located on Cicendo St. Number 16 (formerly number 20), Babakan Ciamis Village, Sumur Bandung District, Bandung City, where the land has a Building Use Rights Certificate Number 46, Babakan Ciamis village, situation drawing Number 835/1993 dated February 11, 1993, area 484 m² in the name of Co-Defendant I and the name have been changed to the name of the Plaintiff dated August 7, 1993, based on the deed of sale and purchase No. 158/2006 drawn up before the Land Deed Making Officer (*Pejabat Pembuat Akta Tanah*, PPAT).

The building and land are vacant and under the Plaintiff's control and maintenance. However, in 2008, Plaintiff renovated the building by obtaining a building permit (*Izin Mendirikan Bangunan*, IMB) Number 503.648.1/1314/DISTARCIP on his behalf, as well as approval from the appropriate agency to lease the building to the Government Sharia Bank. Defendant I visited Plaintiff with letter Number B/831/XI/2008 dated November 6, 2008, stating that the land and building are assets of Defendant I and are covered by Right to Use Certificate Number 18, dated August 28, 1998, and directing the Plaintiff to leave the land and building immediately. The National Land Agency for the City of Bandung received the Plaintiff's request for a change in building use rights to property rights in 2011. However, the application could not be processed because Defendant I's Use Rights Certificate Number 18, Babakan Ciamis Village, had already been issued for the property. As a result, Plaintiff filed a lawsuit to the District Court of Bandung, which issued Decision Number 336/Pdt.G/2013/PN.Bdg on May 19, 2014, granting the Plaintiff's claim in part and declaring that Defendants I and II had done an illegal act (*Onrecht Matigedaad*). It is stated that it was legal and bound by the Deed of Sale and Purchase Number 158/2006, Certificate of Right to Build Number 46 Babakan Ciamis Village, situation drawing Number 835/1993, with an area of 484 m² in the name of Liem Teddy, stating that the Plaintiff is the legal owner of a plot of land and a building located on Cicendo St. Number 16 (formerly number 20), the City of Bandung based on Building Use Rights Certificate Number 46 Babakan Ciamis Village, situation drawing number 835/1993 with an area of 484 m² in the name of Liem Teddy, punishing Co-Defendant I and Co-Defendant II to submit and obey the decision.

Furthermore, Defendant II applied for an appeal against the Court's Decision which the Bandung High Court annulled with Decision Number 399/PDT/2014/PT.Bdg dated November 11, 2011, which in its decision stated that it accepted the appeal and canceled the District Court Decision Number 336/Pdt.G

/2013/PN.Bdg dated May 19, 2014, stated that the Deed of Sale and Purchase Number 54 was valid according to law, stated that it was legal according to the law Certificate of Use Rights Number 18 dated November 11, 1998, measurement letter Number 13 Babakan Ciamis with an area of 484 m² on behalf of the Ministry of Land and Indonesian Army Security. Whereas after the final decision was notified by the Plaintiff/Appellant submitted a cassation request on December 30, 2014, in which Decision Number: 976 K/PDT/2015, the Panel of Judges granted the Cassation request from the Plaintiff (Liem Teddy) annulled the Bandung High Court Decision Number 399/Pdt/2014 /PT.Bdg, which canceled the Bandung District Court Decision Number 336/Pdt.G/2013PN.Bdg, and partially granted the Plaintiff's lawsuit. Given this context, the writers are motivated to conduct research titled "**Settlement of Double Certificate Cases in Bandung (Case Study of Judge's Decision Number: 976k/Pdt/2015)**".

Research Problems

The problem in this study is stated as follows: *First*, what are the efforts to prevent the occurrence of double certificates (Overlapping); *Second*, what obstacles in preventing the occurrence of double certificates (Overlapping).

Research Methods

Normative juridical research is the methodology used in this work, precisely a statutory and conceptual approach (Soekamto & Mamudji, 2009). The author's data collection technique uses library research and identification and clarification of legal facts, while the literature study is secondary data, namely primary legal and secondary legal materials. Secondary data were obtained from literature studies or regulatory documents related to the issues studied, including Law Number 5 of 1960 concerning Agrarian Affairs, Government Regulation Number 3 of 1997 concerning Implementation of Government Regulation Number 27 of 1997 concerning Land Registration, and Supreme Court Decision Number 976K/ PDT/2015. After the secondary and primary legal materials were obtained completely, they were analyzed qualitatively.

Discussion

1. Efforts to Prevent the Occurrence of Double Certificates (Overlapping)

Article 3 of the Law states the goal of Law Number 30 of 2014 Concerning Government Administration. The Law on Government Administration has as one of its purposes, in letter and of Article 3, to produce an orderly administration of

government, and as another of its purposes, in letter b, to promote legal certainty. That necessitates the protection of property rights and the organization of land administration to avoid overlapping land holdings. Legal certainty of land rights is essential, as mandated by the Basic Agrarian Law (UUPA) contains two dimensions: the object's certainty of land rights and the certainty of the subject of land rights. Namely, the location of the coordinated land parcels in a land registration map and the certainty of the subject indicated on the name of the land rights holder listed in the land registration book or land certificate at the National Land Agency (*Badan Pertanahan Nasional*, BPN). In Government Regulation Number 24 of 1997, Article 32 paragraph (1) explains that "a certificate is a letter of proof of rights as strong evidence," but in paragraph (2), the Article states that "if a land parcel has been legally issued a certificate on behalf of the person or legal entity who obtained it in good intention and controlled it, then another party who feels he has the right to the land can no longer demand the exercise of said right if within 5 (five) years since the issuance of the certificate does not submit a written objection to the certificate holder and the Head of the Land Office concerned or not submitting a lawsuit to the Court regarding the ownership of the land or the issuance of the certificate" (Salim, 2019).

Following the description given above, it can be claimed that the following factors contribute to the occurrence of numerous certificates are:

- a. The error of the landowner who neglected to use his property wisely, allowing others to take it over and then using it because he believed it to be no man's land.
- b. Due to a National Land Agency error and the lack of a database on registered and unregistered land parcels, there is a significant chance that multiple people may own the same piece of land.
- c. The oversight of the village office, which lacked information on certified land parcels and ownership of the land.
- d. Land overlaps and land boundaries result from imprecise measuring errors, which can happen when measuring land is done manually with manual measures.
- e. The National Land Agency's incomplete land database uses the BPN as its data source and is supplied by the people (Sasmita et al., 2022).

Based on the identification and legal facts clarification with Sri Wahyu Handayani as an Agrarian Law Specialist at the Jenderal Soedirman University Purwokerto, efforts to prevent double certificates from occurring are:

- a. Implement computerization/digitalization of land registration maps so that certified and uncertified land parcels may be distinguished, and human error is reduced.
- b. Gather information about certified land parcels to make it simpler for the land office to do land registration and prevent the issuance of duplicate certificates.
- c. Plot utilizing GPS (Global Positioning System) technology, with the applicant providing the coordinates of his property on the monitor map. If a plot exists in that field, the ownership will be examined; otherwise, the petitioner may register the land.
- d. controlling the land registration process, specifically when the land measuring is done by the involved party as well as the party whose land is next to the land object of measurement.
- e. To prevent overlapping property ownership, apply administrative controls at the village office to village land, which significantly impacts land registration.

Citra emphasized the need to improve land administration and create land registration maps, like what Sri Wahyu Handayani said. Suppose there is evidence of the presence of numerous certificates. In that case, the cancellation of the certificates can be made as soon as possible with a suitable land registration and land administration map (Citra, 2020).

2. The Obstacle in Preventing the Occurrence of Double Certificates (Overlapping)

According to Article 3 of Government Regulation Number 24 of 1997 Concerning Land Registration, one of the goals of land registration is to give owners of land rights legal security and protection. However, Government Regulation Number 24 of 1997 concerning Land Registration Article 32 paragraph (1) states that the state does not guarantee the accuracy of the physical data and juridical data presented and that there is no guarantee for the owner of the certificate if he is ever sued by third parties who feel harmed by the issuance of the certificate (Harsono, 1999).

The government has made several attempts to prevent the occurrence of double certificates (overlapping), as in the case of Overlapping Certificate Number 976 K/PDT/2015, in which the National Land Agency for the City of Bandung issued two certificates for a plot of land. However, several obstacles prevent the occurrence of double certificates (Overlapping).

According to Sri Wahyu Handayani, the obstacles faced by the government in preventing overlapping certificates are as follows:

- a. Lack of understanding and enthusiasm from the community in registering their land in the Complete Systematic Land Registration (PTSL) program, so the National Land Agency must further increase understanding of the community through legal counseling in the community.
- b. Errors in the land measurement process that are not under the procedure, such as the landowner's absence at the time of the land survey.
- c. A negative land publication system in which in this system the data presented is not necessarily valid, and the state does not guarantee the correctness of the data presented so that, even though the owner of the certificate of land rights has registered, he may still face a lawsuit from another party who can prove that he is the actual right holder.
- d. The current agricultural legislation is partially based on the objectives and tenets of the colonial authority, while others are affected by it. As a result, it contradicts the populace's interests and does not provide legal certainty.

Conclusion

Multiple factors contributed to the double certificates (overlapping) case, including those of the community and the National Land Agency, which lacked a reliable database due to the absence of certain parties' data sources. As a result, the National Land Agency's efforts were required to prevent the occurrence of double certificates (Overlapping). The National Land Agency must take steps to prevent the double certificates occurrence, including developing a computerized/digital program for land registration maps to reduce human error, gathering information on certified land parcels to make it simpler for the land office to perform land registration, and engaging in plotting activities, utilizing GPS (Global Positioning System) technology, managing the registration of land, and performing administrative control over village land at the village office.

The public's lack of enthusiasm for registering their land in the PTSL program, the land measurement method that was not in compliance with the protocol, and a negative land publication system where the data presented is not always valid, and the state does not guarantee presented data accuracy were obstacles that the National Land Agency encountered in preventing the overlapping certificate occurrences.

Suggestion

According to each issue raised in the discussion, the authors make the following suggestions: 1) To reduce human error, National Land Agency must implement a computerization/digitization program for land registration maps.

BPN should make other efforts, such as improving land administration, creating land registration maps, and carrying out administrative orders at village offices on village land; 2) National Land Agency needs to increase socialization with the public regarding the urgency of registering ownership rights to land through the Complete Systematic Land Registration program (PTSL); 3) For citizens to register their land rights more easily, the government must educate the populace on IT knowledge and proficiency.

References

- Badan Pusat Statistik. "Statistik Infrastruktur Indonesia 2020 (Hasil Pemutakhiran Data, Perkembangan Desa 2020) <https://www.bps.go.id/publication/2021/04/28/7ce2f71435c1893e239bf22d/statis-tik-infrastruktur-indonesia-2020-hasil-pemutakhiran-data-perkembanganDesa-2020-.H>.
- Citra, M. E. A. (2020). Eksistensi Program Pendaftaran Tanah Sistematis Lengkap (PTSL) dalam Mencegah Terbitnya Sertipikat Ganda Di Kantor Pertanahan Kota Denpasar, *Jurnal Hukum Saraswati*, Vol.2 (1). 1-15.
- Hanggara, A.C. (2013). *Pelaksanaan Konversi Hak Atas Tanah Adat (LETTER C) Menjadi Hak Milik Di Kabupaten Magelang*. Ilmu Hukum.
- Harsono, B. (1992). *Kegunaan Sertifikat dan Permasalahannya*. Yogyakarta: Seminar Nasional Kitab Undang-Undang Hukum Perdata (KUHPERDATA).
- (1999). *Hukum Agraria Indonesia*. Jakarta: Penerbit Djambatan.
- Hartanto, A. (2009). *Problematika Hukum Jual Beli Tanah Belum Bersertifikat*. Yogyakarta: LaksBang Mediatama.
- Salim, Agus. (2019). Penyelesaian Sengketa Hukum Terhadap Pemegang Sertifikat Hak Milik Dengan Adanya Penerbitan Sertifikat Ganda, *Jurnal USM Law Review*, Vol.2 (2). 174-187.
- Sasmita, A.A., Ma'ruf Hafidz & Hasbuddin Khalid. (2022) Penerapan Prinsip Kehati-Hatian Terhadap Pendaftaran Hak Milik atas Tanah sebagai Upaya Mencegah Terjadinya Sertipikat Ganda. *Journal of Generalis*, Vol.3 (5). 1140-1158.
- Soekamto, S. & Sri Madmuji. (2009). *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. Jakarta: PT Raja Grafindo Persada.
- Syah, M.I. (2014). Sertifikat Tanah Ganda Akibat Lemahnya Database Pertanahan, *Jurnal Ilmiah Hukum Dirgantara*, Vol.4 (2). 44-56.