

The Juridical Analysis of Certificate Property Rights to Land Due to Land Ownership Disputes

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Abstract. *This study aims to determine and analyze juridically the cancellation of certificates of land titles due to disputes over ownership of land rights, and to find out and analyze the legal status of certificates of land titles that have been canceled by the court. The research approach used in this thesis is normative juridical legal research method, the specifications of this research use descriptive analytical, the types and sources of data in this study are primary legal materials, secondary legal materials and tertiary legal materials. The data analysis method used in analyzing the data is qualitative data analysis, namely data analysis that does not use numbers but is based on laws and regulations, literature so that it can answer the problems of this research. All data obtained are then grouped into similar data for analysis purposes, and arranged in a systematic logical manner for further conclusions to be drawn using a deductive approach method (an approach using logic to draw one or more conclusions). The conclusion is the answer or problem under study, so it is hoped that it will provide a solution to the problems in this research. The results showed that the Judge in deciding the case did not pay attention to the Certificate of Property Rights but considered the witness, the judge's decision did not cancel the Certificate only stating it was not valid and binding on the object of dispute by the Court and henceforth the Plaintiff may submit an annulment and application for the right to return for the issuance of the certificate based on a court decision that has permanent legal force to the National Land Agency.*

Keywords: Cancellation; Certificate; Land; Ownership; Rights.

1. Introduction

The 1945 Constitution, Article 33 paragraph (3) states that the land, water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people. The elucidation of the 1945 Constitution of the Republic of Indonesia does not explain the scope of the state's right to control, which includes land, water and the wealth contained therein. It was only emphasized that because they are the main points of people's prosperity, the

land and water and the natural wealth contained therein must be controlled by the State.

Land has economic value, because land is something that cannot be ruled out in the era of national development or to support economic growth. Besides having economic value, land also has social value, which means that land rights are not absolute, but the state guarantees and respects land rights granted to its citizens, so that legal certainty is needed in land tenure protected by law. Civil law arrangements regarding objects/assets have been outlined in several laws, for example Act No. 5 of 1960 concerning Agrarian Principles (UUPA), Act No. 37 of 2004 concerning Bankruptcy, and so on.¹

Given the very important role of land in human life because it can determine the existence and continuity of legal relations and actions, both in terms of the individual and the impact on other people. In order to prevent land issues from causing conflicts of interest in the community, it is necessary to regulate, control and use land or in other words it is called land law, then enact in the State Gazette of the Republic of Indonesia Number 104 of 1960 Act No. 5 of 1960 concerning Basic Basic Regulations The Agrarian Principles and Government Regulation Number 24 of 1997 concerning Land Registration.

In Article 3 letter a of Government Regulation Number 24 of 1997 it is stated that the purpose of land registration is to provide legal certainty and legal protection to rights holders over a parcel of land, apartment units and other registered rights so that they can easily prove themselves as rights holders. Furthermore, in order to provide legal certainty and protection as well as to the holder of the land title in question, a certificate of the right to the land in question is given in accordance with Article 4 paragraph (1) of Government Regulation Number 24 of 1997. The certificate is issued for the benefit of the right holder in question according to physical data and juridical data that has been registered in the land book.²

A certificate is proof that the ownership right to a person's plot of land has been registered, a certificate as proof of right is not a guarantee of protection of someone's legal certainty over the land that is already owned.

The title certificate is a strong proof for the holder of the right, but it does not rule out the possibility of claims from other parties regarding the land rights for which the certificate has been issued, resulting in a dispute in the judiciary. If a

¹Soetami, Siti, 2008, Introduction to Indonesian Law, PT. Refika Aditama, Bandung, p. 10

²Sudana, Made Ari Putra and Ketut Wetan Sastrawan, 2017, "The Process of Canceling Land Ownership Certificates and Legal Protection Based on Court Decisions at the Singaraja District Court" Journal of Law Vol.5, No.2 December 2017. p. 2-3

dispute occurs in the Judicial Institution, the judge first gives the parties the opportunity to reconcile and negotiate, but if the parties do not reach an agreement, the judge continues the proceedings in court by remembering and based on the provisions of the regulations that apply according to positive legal norms. The existence of a claim from a third party as mentioned above can lead to the possibility of cancellation of the certificate of land rights.³

With regard to land disputes in Indonesia, one of which is regarding mutual claims of ownership of land, is a phenomenon that is often found in Indonesia, both between individuals and legal entities with legal entities. Many factors caused this to happen. the important thing to avoid such disputes is that when carrying out and/or organizing land registration, it must be according to predetermined rules.

One of the dispute cases regarding land ownership rights that have been certified over land parcels occurred in Teppoe Village, Poleang Timur District, Bombana Regency in 2020 between Naisya as Plaintiff, Hj.Karetta as Defendant I and the Head of the Bombana District Land Office as Defendant II, and resolved through the Pasar Wajo District Court. Based on the Decision of the Pasar Wajo District Court Number 8/Pdt.G/2020/PN Psw decided that it was stated by law that all letters/proof of ownership of land rights issued on the Land of the Object of the Dispute were in the form of Certificate of Property Rights Number 852, with a Measurement Letter Number: 845/95 dated 23 January 1995 registered under the name: HAMIDO (Husband of Defendant I) was declared invalid and did not have binding legal force on the Land of the Dispute Object. Thus the emergence of civil disputes between the parties, to prove the guarantee of legal certainty over the land is resolved through the judiciary. Therefore, the author is interested in discussing further regarding the Juridical Analysis of Cancellation of Land Ownership Certificates Due to Disputes over Land Rights Ownership (Decision Study No. 08/Pdt.G/2020/PN.Psw).

2. Research Methods

This research method uses normative juridical research methods, namely by emphasizing secondary data by studying and studying positive legal principles originating from literary data and comparative law, as well as elements or factors related to the title of this research. The specification of the research used is analytical descriptive, namely by describing the applicable laws and

³Ariadi Damar, 2017, "Cancellation of Certificates Against Ownership of Land Rights by Judges (Analysis of Cases of Decisions of the District Court of Ngawi District No. 11/Pdt.G/2012/Pn.Ngw.)" *Journal Repertorium*, Volume IV No. 2 July - December 2017. Pg. 136

regulations associated with legal theories and the practice of implementing positive law related to the problem.⁴The data collection carried out in this research was as a technique of obtaining legal materials by means of library research. Regarding this kind of research it is usually also called "Legal Research" which is collecting material from references that support this research (conducting literature studies in the form of documents, literature, articles related to the problem), Data analysis used in this study is qualitative data analysis, namely data analysis that does not use numbers but is based on statutory regulations, literature so that it can answer the problems of this study

3. Results and Discussion

3.1. Juridical Analysis of Cancellation of Land Ownership Certificates Due to Land Ownership Disputes (study of decision No. 08/Pdt.G/2020/PN.Psw)

Land issues actually have many social dimensions that are contested starting from social, economic, political and religious relations, gaps in community relations and human dignity and dignity whose resolution requires the good will of the disputing parties so as not to cause societal upheaval. The issue of land in the era of development and industrialization is indeed increasingly complex and has the potential to cause turmoil. The solution approach is not merely a juridical aspect, but also involves psychological considerations.⁵

In accordance with this study is the Juridical Analysis of Cancellation of Land Ownership Certificates as a Result of Land Ownership Disputes where the basis for research is decision No. 08/Pdt.g/2020/PN.Psw where the principal decision is to declare by law that all letters of proof of ownership of land rights issued on the object of the disputed land are in the form of certificate of ownership number: 852, with measurement letter number: 845/95 January 23, 1996 registered under the name: HAMIDO (Husband of Defendant 1) was declared invalid and did not have binding legal force on the Land of the Dispute Object.

In resolving a case the judge is considered to know the law (*ius curia novit*⁶) so that what is sought in court is objectively knowing the facts or events as the actual case as the basis for the decision, not a priori directly finding the law without the need to know in advance the actual case.

The judge can find out the disputed facts/events by looking at and paying

⁴Ronny Haniatjo Soemitro, 1990, Legal Research Methods and Mathematics, PT Ghalia Indonesia, Jakarta. Thing. 97-98

⁵Adrian Sutedi, 2013, Transfer of Land Rights and Registration, Sinar Graphic, Jakarta, p. 21

⁶Zairin Harahap, 1997, State Administrative Court Procedural Law, Raja Grafindo Publisher, Perkasa, Jakarta. p. 141

attention to the written evidence and witnesses submitted by the parties, then he makes a decision by following the procedures determined as stipulated in the law.

Analysis of the case, the author refers to the provisions contained in PP Number 10 of 1961 because the issuance of the certificate occurred before PP number 24 of 1997 came into force and was terminated after PP number 24 of 1997 came into effect, so the author will compare the two provisions.

Against matters that are not regulated in PP No. 10 of the year 1961, the authors focus on and refer to the provisions in PP No. 24 of 1997 to further increase understanding of the case seen from the current laws and regulations.

The author analyzes the basic considerations of the panel of judges in deciding this case as follows:

a. The deceased husband of the Defendant registered the land object of the dispute as Certificate of Ownership Number 852, with Measurement Letter Number: 845/95 dated 23 January 1995 registered under the name: HAMIDO (Husband of Defendant 1) through the Prona Program in 1999, without permission/without knowledge The plaintiff and the other wails experts of the late MUSTAFA as the party most entitled to the Land Object of the Dispute.

In this case, there are indications that the Land Office was not thorough in investigating the history of the land and who the land owner should be entitled to, so that the Certificate of Property Rights Number 852 in the name of Defendant I's husband, Defendant I, was issued not on behalf of the real owner and is not legally valid. The accuracy and precision of the Land Office officers in carrying out their duties will affect the legal certainty of land rights, because the human error that occurs depends on the condition of the officer concerned. To avoid mistakes that occur, it is necessary to re-check from the Land Office staff both the physical data and juridical data of a land parcel.

b. Evidence submitted by the Plaintiff and Defendant in evidence at trial:

1) The plaintiff submitted evidence P-1 Photocopy of Victory Letter Number: 539.2/271/2016 dated 29 August 2016 issued by the East Poleang District Office and signed by Urnar Manne, SE as the East Poleang Sub-District Head.

2) The plaintiff also submitted 4 witnesses namely Arifuddin, Zulfritri, Muhammad Yusuf Hido, and H. Sainuddin

3) The Defendant submitted written evidence in the form of Certificate of Ownership Number 852 in the name of Hamido

Of the four witnesses presented at trial by the plaintiff, these witnesses stated that the land was really controlled and owned by the plaintiff,

In examining and deciding this case, the judge gave more consideration to written evidence and witness testimony at the trial submitted by the Plaintiff. This is in accordance with the provisions of article 163 HIR that whoever says he has rights, or he mentions an act to strengthen his rights, or to dispute the rights of others, then that person must prove the existence of that right or the existence of that incident.

The judge did not consider the legal force of the Certificate of Property Rights Number 852 in the name of Hamido submitted by the Defendant, even though the Defendant had filed for land registration in accordance with the provisions of PP number 10 of 1961 which had been renewed by PP Number 24 of 1997 and based on Article 19 UUPA the owner was given a letter proof of rights in the form of a certificate of land rights which serves as a strong means of proof.

The Judge's decision has fulfilled a sense of justice for the Plaintiff as the right holder because in fact the plaintiff is the legal owner of the land which is the object of the case. This case was won by the plaintiff with the consideration that the written evidence and statements by the witnesses submitted by the plaintiff were related to one another. In addition, the history of land ownership by the panel of judges has clearly determined that the Plaintiff has the right to the said land. The Judge's decision ordered that all letters/evidence of ownership of land rights issued over the Land of the Dispute Object be in the form of a Certificate of Ownership Number: 852, with a Measurement Letter Number: 845/95 dated January 23, 1995, registered in the name of:

Judges as certain law enforcement officials have to be able to guarantee and ensure that the rule of law runs as it should have been regulated by the rules. This is to ensure the rule of law, law enforcement also includes the values of justice contained in the sound of formal rules or values of justice that live in society.

Law enforcement must provide justice and legal protection to the community based on statutory regulations. Basically, legal regulations are community agreements to regulate behavioral relations between community members and between individuals and the government who are considered to represent the interests of society. In general, protection means protecting something from things that are dangerous, something that could be in the form of interests or objects or goods. In addition, protection also contains the meaning of protection given by someone to someone who is weaker.

The judge as a law enforcement officer has decided in case

No.08/Pdt.G/2020/PN. Psw that Declare by law that the actions of the Defendants constituted an unlawful act which greatly harmed the Plaintiff as the wife and/or heir of Atmarhum MUSTAFA and Declare by law that all letters of proof of ownership of land rights issued over the Land of the Object of the Dispute are in the form of Title Certificates Property Number: 852, with Measurement Letter Number: 845/95 dated 23 January 1996 registered under the name: HAMIDO (Husband of Defendant 1) was declared illegitimate and did not have binding legal force on the Land Object of the Dispute. Thus the Certificate of Ownership Number. 852, with Measurement Letter Number: 845/95 dated 23 January 1996 registered in the name of: HAMIDO located in Teppoe Village, East Poleang District, Bombana Regency.

3.2. Legal Position of Land Ownership Certificates That Have Been Canceled by the Court

Property Rights Certificates which were canceled by the court because they contained administrative defects in the form of incorrect juridical data errors. Provisions for canceling a certificate of ownership due to a court decision are regulated in the Minister of Agrarian Regulation No. 9 of 1999 that the decision to cancel land rights due to carrying out a court decision that has obtained legal force remains issued at the request of the interested party. A court decision that has obtained permanent legal force includes being declared null and void or has no legal force or is essentially the same as that. Requests for annulment of rights due to implementing a court decision that has permanent legal force can be submitted directly to the Minister or Head of the Regional Office or through the Head of the Land Office.

The Ministry of Agrarian Affairs and Spatial Planning/National Land Agency is only an institution to strengthen legal certainty in the control, use and utilization of land in order to carry out the tasks and functions as mandated in the provisions of Article 2 paragraph (2) of the Basic Agrarian Law, so in principle the duties and functions services to the community and public and civil legal entities are public administration in nature, meaning that these services are mandates that must be carried out as a consequence of applicable laws and regulations relating to administrative law.

In the process of issuing certificates of land rights, there may be administrative errors or defects, so the issuance of certificates can be cancelled. Cancellation of land rights is the cancellation of a decision to grant a land right or certificate of land rights because the decision contains defects in administrative law in its issuance or to carry out a court decision that has obtained permanent legal force (Article 1 number 14 of the Minister of Agrarian Affairs/BPN No. 9 of 1999).

District Court decision no. 08/Pdt.G/2020/PN.Psw Declare as follows: Declare by

law that all letters of proof of ownership of land rights issued on the Land of the Disputed Object are in the form of Certificate of Ownership Number: 852, with Measurement Letter Number: 845/ 95 dated 23 January 1996 registered in the name of: HAMIDO (Husband of Defendant 1) was declared invalid and did not have binding legal force on the Land of the Object of the Dispute;

The order from the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 21 of 2020 concerning the Handling and Settlement of Land Cases, based on the said decision, is to cancel the certificate of land rights, stating that it has no legal force for the certificate of land rights. The injunction does not state that there is an order for the issuance of land rights, therefore it is necessary to process land registration for the first time again at the local Land Office by submitting an application letter and the necessary attachments. In Article 40 paragraph 1 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 21 of 2020 concerning Handling and Settlement of Land Cases, the implementation is by submitting an application letter,

If the certificate has been canceled by a court that has permanent legal force, the canceled certificate is no longer valid. As Case No. 08/Pdt.G/2020/PN.Psw which the author investigated because this case already has permanent legal force, it can be requested for cancellation of the certificate, after cancellation, the heirs of the late Mustafa can apply for their rights.

Evidence of rights (certificate) held by a person does not yet show that person as the actual right holder. At any time it can be canceled if it turns out that there is another party who can legally prove that he is the real owner. Therefore the role of the court is to determine, assess and decide who has the right to own the disputed land based on evidence and witness testimony. The reason for the annulment is due to defects in administrative law and/or to implement a court decision that has permanent legal force, because the right holder does not fulfill the conditions set out in the Decree on the Granting of land rights, and because of an error in the Decree on the Granting of the said right.

Legal certainty of certificates of land rights, including: legal certainty of the status of registered land rights, legal certainty of the subject of land rights, legal certainty of the object of land rights. Legal certainty of certificate of land rights issued by PP no. 24 of 1997 which adheres to a negative publication system with a positive tendency: Whereas a certificate of land rights is a strong but not absolute proof of title. This can be seen in the elaboration of the provisions of Article 19 Paragraph (2) letter c, Article 23 Paragraph (2), Article 32 Paragraph (2), and Article 38 Paragraph (2) of the UUPA, that "the land registration publication system adopted is a publicity system negative, namely the certificate

is only a strong proof of rights and not an absolute proof of rights.⁷ Even though the provisions of Article 32 Paragraph (1) PP No. 24 of 1997 states: "A certificate is a letter of evidence of rights that applies 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 in the measurement letter and land title book concerned.

Legal certainty in the issuance of certificates is in the status, object and subject of the land as long as the data is correct, the land registration publication system adopted in our country is a negative publication system, namely the certificate is only a strong proof of rights and is not a proof of rights which is absolute, in this case the rules still provide opportunities for other parties who feel entitled to file a lawsuit in court.

4. Conclusion

The judge should be in resolving cases regarding disputes over land ownership rights and to further explore issues in land law related to disputes over land ownership rights, the panel of judges can add witness evidence by presenting experts in the field of land (expert witnesses) to ask him for advice before making a decision. Judges who handle a case can obtain additional information or explanations from experts who are experts in their field to strengthen the basis of the decision and anticipate that the decision issued will not be an inaccurate decision, so that there are no more parties who are harmed because the judge does not dig up information and explanations regarding the problem which is being handled. And officers from the National Land Agency/BPN can act more decisively and be careful and thorough in issuing land certificates, so as to avoid problems that arise in the future. As is the case in this study, where there was a dispute over the issuance of a wrong subject certificate by BPN, thus harming the party entitled to the land, there needs to be good faith from the applicant for the issuance of the certificate of land rights so as not to harm other parties who are the real owners of the land.

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⁷UripSantoso II, Op. cit., p. 319

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