

The Legal Protection for Land Rights Holders Due to Loss of Data

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Abstract. *In its history before the enactment of the UUPA there was a dualism of Agrarian Law in Indonesia. This dualism in agrarian law is more detrimental to indigenous groups, because customary law governing lands with customary rights is an unwritten law, while on the other hand land with western rights is regulated by written western law. Registration for lands subject to western law aims to provide legal certainty guarantees known as Rechts Cadaster or Legal Cadaster. The formulation of the problem in this study are: 1) legal protection for land rights holders due to loss of data at the Kendari City Land Office, 2) the impact of loss of land records on community land rights in Kendari City, 3) legal aspects of legal protection of land rights resulting from data recovery. The method used by researchers is normative legal approach and specifications in this study are included in the analytical descriptive. The sources and types of data in this study are primary data obtained from field studies by interviewing BPN in Kendari City. And secondary data obtained from literature studies. Based on the results of research that legal protection against land rights holders due to loss of data at the land office namely 1) BPN only provides legal protection to certificates of land rights whose archives have been restored; 2) The purpose of data recovery is to provide legal protection for land rights whose records have been lost/destroyed. BPN recovers data and re-approves land certificates and books as well as measurement papers based on Article 18 Perkaban Number 6 of 2010. The impact of the loss of land records on community land rights in Kendari City is 1) the loss/destroy of land records can weaken the strength of evidence of a certificate as evidence of land rights; 2) the impact of the destruction of land records results in certificates of land rights whose data cannot be used as evidence before being recovered before committing legal acts; 3) loss or destruction of land records does not necessarily eliminate/remove the right to the land in question. Legal aspects of the legal protection of land rights resulting from data recovery are 1) Substantial Aspects, 2) Structural Aspects, 3) Cultural Aspects.*

Keywords: Land; Protection; Rights.

1. Introduction

The land ownership rights according to Article 20 paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Regulations, hereinafter referred to as the Basic Agrarian Law (UUPA), are hereditary, strongest and most fulfilled land rights can be owned by people on land. Hereditary is defined as a right that can be passed on to heirs, the strongest in relation to other land rights, and the fullest in terms of the authority possessed by the right holder. According to Article 16 paragraph (1) letter a of the BAL, one of the recognized land rights is property rights.

In its history before the enactment of the UUPA there was a dualism of agrarian law in Indonesia. This dualism in agrarian law is more detrimental to indigenous groups, because customary law governing lands with customary rights is an unwritten law, while on the other hand land with western rights is governed by written western law. Registration for lands subject to western law aims to provide legal certainty guarantees known as Rechts Cadaster or Legal Cadaster. As for land with customary rights, even though there is registration, it does not aim to provide guarantees of legal certainty but rather to administrative data collection, especially with regard to paying taxes, which is known as the Fiscaal Cadaster.

Article 19 of Law Number 5 of 1960 Concerning Basic Agrarian Regulations hereinafter referred to as UUPA states:

Paragraph (1) : "In order to guarantee legal certainty by the Government, land registration is carried out throughout the territory of the Republic of Indonesia according to the provisions stipulated in Government Regulations".

Paragraph (2) :The registration in paragraph (1) of this article includes:

Measurement, mapping, and bookkeeping of land;
Registration of land rights and transfer of said rights;

Provision of letters of proof of rights, which are valid as a strong means of proof.¹

The government regulation referred to in Article 19 paragraph (1) of the UUPA is Government Regulation Number 10 of 1961 (hereinafter referred to as PP 10 of 1961) concerning Land Registration which was later replaced by Government Regulation Number 24 of 1997 concerning Land Registration hereinafter referred to as PP 24 years 1997.

Provision of letters of proof of rights that are valid as a means of proving the strong rights referred to Article 19 paragraph (1) UUPA is a certificate.

It is explained in Article 19 UUPA paragraph (2) letter c that land rights certificates are valid as a strong means of proof regarding ownership of land rights, proof of transfer of rights, encumbrance of land rights and records of other legal events regarding land. UUPA has provided guarantees of legal certainty to holders of land rights regarding control and ownership. The legal certainty guarantees are meant to cover rights certainty, object certainty, and subject certainty, as well as the administrative process in the form of issuance of certificates of land rights.

The granting of certificates of land rights is one of the functions of land registration in Indonesia which is aimed at guaranteeing legal certainty which is *rechts cadaster* in nature. Documents used as the basis or basis for land registration rights in the form of physical data and juridical data are then processed through the land registration process so that a certificate is issued.

In Article 3 letter a PP 24 of 1997 stated: "Land registration aims 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 the holder of the rights in question". Article 4 PP 24 of 1997 paragraph (1): "To provide certainty and legal protection as referred to in Article 3 letter a to the right holder concerned, a certificate of land rights is given".

It is emphasized in Article 31 PP 24 of 1997 that the issuance of a certificate of land rights as a means of proof of ownership is issued upon request. People who are aware of the importance of a land right will immediately register their land. The importance of the certificate as proof of ownership depends on the perception and legal awareness of the community itself. and If the community is aware of the law, they will be encouraged to immediately register their rights at the local Land Office (BPN). Legal awareness of their rights and obligations, as evidenced by 1). the control and acquisition is carried out in good faith and not in dispute. 2). register their rights at the local Land Agency (BPN) Office. This legal awareness is an element of the legal culture of the community which greatly influences the success of achieving the goal of land registration and that good faith holders of land rights must be protected. If legal awareness of the rights and obligations to land ownership and control is realized in a social reality, then this will be able to help the successful implementation of land registration carried out by the government, the final product of which is a certificate of land rights.

The purpose of obtaining evidence of land rights in the form of a certificate is to obtain guarantees of legal certainty and legal protection for the land parcels they

own or control. In this regard, legal protection can only be obtained after the land is registered². This means that legal protection will be given after obtaining legal certainty regarding the extent, location, boundaries, and status of their rights.

The certificate of land rights as the final result of the land registration process contains physical data, namely information about the location, boundaries, area of the land parcel, as well as parts of the building or structures on it if deemed necessary. The meaning of the certificate has been stipulated in Government Regulation No. 24 of 1997 Article 32 paragraph (1) concerning Land Registration.

For holders of land rights, having a land certificate has more value, because compared to other written evidence, certificates are strong evidence and are legally recognized. Moreover, according to Article 31 paragraph (3) in PP No. 24 of 1997 concerning land registration it has been expressly stated that "Certificates may only be submitted to parties whose names are listed in the land book or other parties authorized by them". So that it can be said that the owner of the land title certificate is the legal owner of the land object as stated in the land title certificate and must be considered correct until proven otherwise from the court with other evidence.

The increasing need for land as well as wider public knowledge requires higher awareness (with the self-initiative of community members) to carry out or register their land rights to avoid land disputes in the future due to the absence of proof of ownership of rights over land or what is often called a "Certificate".

Given the importance of a certificate of land rights, it is hoped that the community will always care for and maintain its existence and store it in a safe place so that it does not disappear. but in reality there are still cases of loss of land title certificates, either from the hands of the owners themselves or loss of archival data at the land office, due to the loss of land rights certificates which are strong evidence for the land owner, should be addressed with more carefully by the land office where the land object is registered, so that it can be immediately replaced with a new certificate through procedures and according to applicable regulations and does not take a long time and begins with a loss report from the land owner.

In PP No. 24 of 1997 concerning land registration in Article 57 and Article 59 it has been regulated regarding the provisions for issuing replacement certificates due to lost reasons, which are then further regulated through the regulation of the Minister of Agrarian Affairs / Head of the National Land Agency No. 3 of 1997

²Ibid., p.138.

concerning implementing provisions and government regulation No.24 of 1997 concerning land registration.

2. Research Methods

In a study to find and develop the clarity of a knowledge, a research method is needed. Because using research methods will provide convenience in achieving the objectives of the research.

3. Results and Discussion

3.1. Legal Protection for Land Rights Holders Due to Loss of Data at the Kendari City Land Office

In the current era of globalization and economic liberalization, the role of land for various purposes will increase, both as a place to live and for business activities. In this regard, the need for support in the form of legal certainty in the land sector will also increase. The granting of legal protection in the land sector requires the availability of written, complete and clear legal instruments that are implemented consistently in accordance with the spirit and content of its provisions.

After the enactment of the UUPA of 1960 Letters C/D and tax forms were no longer issued but if they were still there they would still be recognized by the government with a note that land registration must be carried out immediately which will obtain a certificate of land rights as the only proof of ownership of the rights. The application of UUPA is known by the UN which is proof that the authorities or holders of rights or buildings have carried out their obligations to pay taxes on objects of land registration that have been determined in statutory regulations. In fact, PBB is not proof of ownership of land rights, because the only proof of ownership of rights that is recognized by law is a certificate of land rights.

The concept of legal protection for holders of land rights cannot be separated from the issue of justice in the implementation of the law itself. Gustav Radbruch stated that there are three basic values that need to be pursued and need serious attention from law enforcers, namely the values of legal justice, legal certainty and legal benefits.

In relation to legal protection for certificate holders, preventive legal protection can be in the form of predetermined rules relating to land issues and land certificates.

Here the relevant law has established legal rules that can be used as a guide in resolving land disputes and as a basis or foundation in providing legal protection

itself. One of the articles that states to provide absolute legal certainty for certificate holders, namely Article 32 paragraph (2) PP No. 24 of 1997 which reads: Article 32 paragraph (2) "In the event that a parcel of land has been legally issued a certificate in the name of a person or legal entity who has acquired the land in good faith and actually controls it, then other parties who feel they have rights over said land can no longer demand said implementation if within 5 years of the issuance of the certificate does not submit a written objection to the certificate holder and the Head of the Land Office concerned or does not file a lawsuit against the court regarding land tenure or issuance the certificate." From the wording of the article above, this means that the law has provided a way for certificate holders to absolutely own the land for which the certificate has been issued without ignoring other provisions, even though in practice lawsuits can still be filed.

The role of land archives is very important. Archives in which there are authentic documents greatly affect the strength of certificate proof in the event of a dispute, conflict, or case in court. A Land Title Certificate without a file is like a body without a spirit, it has no power to fight the claimants. Protection of land rights is granted when the physical data, juridical data, administrative data contained in the certificate match those in the public registers at the Land Office.

Thus it can be said that the legal protection given to assets or rights to community land is:

- Preventive legal protection regulated in the provisions of the UUPA and its implementation are regulated in PP 10 of 1961 which was later replaced by PP 24 of 1997 concerning land registration, Article 107 PMNA/Ka BPN No.9 of 1999;
- Repressive legal protection which is sociological protection in the form of recognition from the community or which has been tested materially through a decision of a panel of judges or a court.

The action taken by the Kendari City Land Office to restore community land rights whose data has been lost is to arrange land records. Arrangement of land archives as referred to in Article 11 letter c of Perkaban 6 of 2010 includes repairing damaged documents, replacing lost or damaged documents and restructuring archives.

The requirement for guaranteeing legal protection for a land right is that the land parcel must be fulfilled first. those with the right holder must register the recovery of the data, by registering the right to the land it will be clear who owns it, how wide it is, where it is located, and who is next to it (its boundaries). So if the element of certainty is fulfilled, the state is obliged to provide legal protection .

With regard to legal certainty, Jan Michiel Otto and Boedi Harsono stated that to create legal certainty in the land sector, the following conditions must be met:

- Availability of written legal instruments, yes
- complete, clear and implemented consistently;
- Implementation of effective land registration;³
- There are clear and consistent laws and regulations;
- Government agencies apply the rule of law consistently, obey and comply with it;
- Communities adapt their behavior to these legal rules;
- Judges are impartial and must apply the rule of law consistently and be observant when resolving legal disputes;⁴

Thus it can be said that the Certificate of Land Rights will be able to provide guarantees of legal certainty and legal protection as strong evidence if the physical data, juridical data, and administrative data are in accordance with the measurement letters and land books in the Land Office and are supported by documents stored in the warkah and public register mentioned above. As stated in Article 19 paragraph 2 letter c, Article 23. 32, and 38 UUPA in conjunction with Article 32 paragraph 1 PP 24 of 1997, a certificate is a strong proof of both the subject and the object of land rights, as long as the physical data and juridical data match the data in the measurement letter and the land book concerned.

Regarding the replacement certificate due to loss or damage, it is contained in Article 57 paragraph (1) of Government Regulation Number 24 of 1997 which contains: (1) At the request of the right holder, a new certificate is issued to replace the damaged, lost,

There are conditions that must be met in order to get the land certificate back, because there is a concern that there will be multiple certificates for the same piece of land.

In issuing a replacement certificate, usually the Land Office will conduct a site survey (verlap) and re-measure to ensure that the condition of the land is still as stated in the land book and a photocopy of the certificate from the applicant if the previous files still exist. The National Land Agency in this case is very careful in issuing replacement certificates. However, it is not a very serious problem if a party loses their certificate and wants to re-manage their land to obtain a replacement certificate. Provided that he has a great desire to take care of his

³Boedi Harsono, Indonesian Agrarian Law History of the Formation of the UUPA, Contents and Implementation, loc.cit

⁴Adrian Sutedi, loc.cit, p.21

land again, and is able to prove beforehand that the land is really his right, and fulfills all the conditions stipulated by law.

4. Conclusion

Legal Protection for Land Rights Holders Due to Loss of Data at the Kendari City Land Office BPN only provides legal protection to certificates of land rights whose archives have been restored; The purpose of data recovery is to provide legal protection for land rights whose records have been destroyed. BPN is recovering data and re-validating land certificates and books as well as measurement letters based on Article 18 Perkaban Number 6 of 2010.

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