

Law Enforcement Dispute Resolution Dual Certificates

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Abstract

Multiple land titles are a very complicated and frightening issue for some people. Many people in good faith practice buying and selling land in Indonesia which is tertiary because the land they buy has two or more certificates. The approach method used in this research is the normative juridical approach, the results of the research stated that the implementation of double certificate dispute resolution carried out by the National Land Agency is seen from the dispute resolution process as non-litigation dispute resolution or outside court law. Legal provisions on land rights in Indonesia authorize Indonesian citizens to use a plot of land for certain purposes.

Keywords: *Dispute Resolution; Dual Certificates; Law Enforcement;*

1. Introduction

Within the Republic of Indonesia, the structure of the life of the people, including the economy, is mainly still in an agrarian style. Earth, water, and space, as gifts from God Almighty, have a very important function to build a just and prosperous society as one aspires to.¹

The Pancasila principles formulated in the Preamble to the 1945 Constitution are a form of the nation's ideals. The basis of the Almighty God is clearly formulated in Article 1 paragraph (2) of the main agrarian law, which reads: "The whole earth, water and space, including natural resources contained therein in the territory of the Republic of Indonesia, as a gift from God Almighty is the earth, water and space of the Indonesian nation and constitute a national wealth."

Land is a fundamental need for the survival of humans, animals and plants. Land has a strategic function, both as a natural resource and as a means of meeting basic needs in supporting the implementation of human productive activities. Constitutionally, the 1945 Constitution in Article 33 paragraph (3) states that "Earth, water, space and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people".

From these basic provisions, it can be seen that the prosperity of the people is the main

1. Boedi Harsono, *Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi Dan Pelaksanaannya*, Djambatan, Jakarta, 1993, page. 28.

objective of the utilization of the functions of the earth, water, space and natural resources contained therein.² In accordance with the mandate of Article 19 of the main agrarian law, every land must be registered at the local City / Regency Land Office. With this land registration, a person can easily obtain information regarding a plot of land, such as what rights are owned, how large is the location of the land, whether it is encumbered with mortgages and the most important thing is that the land will get a certificate as a proof of strong proof of rights.

Civil rights are human rights that we must uphold and respect by our fellow human beings with the aim of achieving prosperity and peace in people's lives. The main agrarian law adopts a negative system, so that the information contained in the proof of right has legal force and must be accepted by the judge as true information as long as and as long as there is no other means of proof that can prove otherwise. If this happens, the Court will decide which evidence is correct.³

In the Basic Agrarian Law No. 5/1960, there is never a mention of a land certificate, but as found in Article 19 paragraph (2) letter c there is a mention of "proof of rights" in the everyday sense of a certificate this right is often interpreted as a certificate of land.⁴

One of the disputes that often occurs in society is a dispute over multiple certificates. Double certificates are certificates which correspond to the same plot of land. Thus, one land parcel is described with two or more certificates with different data.⁵ A double certificate is also called an overlapping certificate. Both overlapping all parcels of land or overlapping part of the land.

The number of land disputes, especially regarding double certificates, is not only unsettling to the public but also greatly affects the performance of the National Land Agency as an institution that has the main task of carrying out land administration. From a social perspective, this will disturb the relationship between one person and another. From an economic point of view, the emergence of a double certificate is very detrimental, because the land becomes unproductive and cannot even be utilized.

The National Land Agency always strives for land dispute resolution solutions based on applicable laws and regulations by taking into account the sense of justice and respecting the rights and obligations of each party. The dispute resolution steps that they or the National Land Agency have taken are deliberation. Likewise in a double certificate dispute, the National Land Agency is also authorized to negotiate, mediate and facilitate the disputing parties and initiate an agreement between the parties.⁶

The purpose of this research is to find out and analyze Knowing and analyzing legal

2. Urip Santoso, *Hukum Agraria Dan Hak-Hak Atas Tanah*, Kencana, Jakarta, 2008, page.50.

3. Hasan Kusumah, *Hukum Agraria I*, Gramedia Pustaka Utama, Jakarta, 1995, page.77.

4. Mhd. Yamin Lubis dan Abd. Rahim Lubis, *Hukum Pendaftaran Tanah*, Mandar Maju, Jakarta, 2008, page. 28

5. Ali Achmad Chomzah, *Hukum Pertanahan*, Prestasi Pustaka, Jakarta, 2002, page.139.

6. Darwis Anatami, Tanggung Jawab Siapa, Bila Terjadi Sertifikat Ganda Atas Sebidang Tanah, *Jurnal Hukum Samudra Keadilan*, Volume 12, Nomor 1, Januari-Juni 2017, page.1-17

protection for the auction winner for the execution of mortgage rights in the event that the auction object is blocked by the National Land Agency and analyzing the responsibility of auction officials for the blocking of auction objects by the National Land Agency.

2. Research Method

The approach method used in this research is the normative juridical approach where law is conceptualized as what is written in statutory regulations (law in books) or law is conceptualized as a rule or norm which is a benchmark for human behavior that is deemed appropriate.⁷ Basically, this research is a combination of library research and field research. The specification of this research is descriptive analysis, namely research that does not only describe the state of the object but provides an overview of the problems that occur. Especially in the case of multiple certificate disputes.⁸

3. Result and Discussion.

1. Implementation of double certificate dispute resolution

The implementation of double certificate dispute resolution begins with the submission of files that must be legalized by the related parties before submitting them to the National Land Agency Office in accordance with applicable operational standards. Based on Article 6 of the decision of the head of the National Land Agency No. 11/2016 states that "In carrying out dispute resolution based on complaints from the public, it must be submitted to the Head of the Land Office in writing, through the complaint counter, letterbox or Ministry website which at least contains the identity of the complainant and a brief description of the case. In the complaint, a photocopy of identity, the identity of the power of attorney and power of attorney if authorized, as well as supporting data or evidence related to the complaint must be attached".

After receiving data collection and analysis results, the head of the National Land Agency office instructs the official responsible for handling the dispute to follow up the settlement process no later than 7 (seven) working days after receiving the results of data collection and analysis results from the Land Office. The team that is responsible for handling these disputes is tasked with conducting studies and examining the disputed land, compiling and submitting a dispute resolution report. The assessment is carried out to find out the main problem, causes of disputes, potential impacts, and alternative solutions. The alternative means of solving it can be done by means of familial mediation.

The dispute resolution at the National Land Agency, seen from the civil dispute settlement process, is a non-litigation dispute settlement or out of court. In particular, the

7. Mukti Fajar ND and Yulianto Achmad, *Dualisme Penelitian Hukum Normatif & Empiris*, Pustaka Pelajar, Yogyakarta, 2010, page. 51

8. Ronny Hanitijo Soemitro, *Metode Penelitian Prosedur Dan Strategi*, Sinar Pagi, Jakarta, 1985, page.9

resolution of multiple certificate disputes at the National Land Agency is attempted by means of mediation if possible but if no agreement is reached then it is recommended to resolve through legal channels through litigation or in court.

One way to solve the problem with double certificates is to turn off / cancel one of the certificates. This is in line with Article 24 paragraph (7) which is regulated in the Decree of the Head of the National Land Agency No. 11 of 2016, which reads "In the event that there is overlapping certificate of land rights on one parcel of land, the Minister or Head of the Regional Office of the national land agency in accordance with their respective authority issues a Decree to Cancellation of the overlapping certificate so that there is only 1 (one) land parcel a certificate of legal land rights ".

The process of resolving land disputes in the national land agency which is regulated in the National Land Agency Decree No.11 of 2016, varies in implementation time because of its casuistic nature, which depends on the type of dispute that arises and the parties to the dispute. In practice, at least 3 (three) months for dispute resolution through mediation from the receipt of the complaint letter / complaint report on the problem. Regarding costs in dispute resolution, the community is not charged at all because in the national land agency, especially the Semarang City National Land Office, there is a section for handling problems and controlling land which has the main task of resolving existing problems, whether disputes, conflicts or cases.

If the parties are willing to be mediated, then mediation in resolving land cases, especially regarding double certificate disputes, is carried out based on the principle of deliberation to reach a consensus for all parties. Deliberation is one of the disputing parties' approach steps that are often successful in dispute resolution efforts.

Based on Article 38 of the Decree of the Head of the National Land Agency No. 11 of 2016, mediation is carried out no later than 30 days. The parties to mediation are only parties to disputes and parties from the national land agency, especially in the section of disputes, conflicts and cases. the national land agency only facilitates the resolution of disputes. The national land agency in resolving disputes acts as a moderator and as a neutral party and does not exert pressure. The national land agency also does not have the power to determine which parties are wrong and right because determining who is wrong and right is the authority of the court.

If the mediation is not attended by one of the disputing parties, the implementation will be postponed. However, after 3 (three) proper invitations they were still absent, the mediation was canceled and they were allowed to settle through legal channels.

In the mediation process, if there are 2 (two) same certificates and both certificates are issued by the national land agency, in this case the national land agency is the culprit. If

one of the parties has physical evidence such as a house, then the party who does not have physical evidence will release / cancel the land in dispute and the party who has physical evidence will provide compensation to the party releasing / canceling the land. If both parties have no basis or evidence, then the mediation cannot be continued or it is canceled.

For people who understand the law in terms of resolving disputes, especially land disputes, of course they will prefer the peaceful route, namely mediation, because if it goes through the legal route in the Court the process will be long and cost a lot of money. If the mediation that has been facilitated by the national land agency does not find common ground, then the dispute can be resolved in court and the national land agency is willing to be sued.

Based on Article 34 paragraph (1) Government Regulation no. 24 of 1997 concerning land registration states: "Every interested person has the right to know the physical data and juridical data stored in registration maps, land registries, measuring documents and land books". Physical data which is related to information on the location of the land, boundaries and area of land parcels, while juridical data on the status and rights holders.

In Article 187 paragraph (1) of the Regulation of the State Minister for Agrarian Affairs / Head of the National Land Agency No. 3 of 1997 also states that "information about physical data and juridical data contained in registration maps, land registries, measuring documents and land books is open to the public and can be given to interested parties visually or in writing".

Based on the explanation of the article above, when a person or legal entity wants to buy a plot of land, to find out the status and condition of the land, we can check the land at the national land agency even though that is also one of the duties of the Land Deed Officer even though it is an individual or a legal entity as well. can check directly with the national land agency.

Regulation of the Minister of Agrarian Affairs Number 11 of 2016 states, what is called a land case is a dispute, conflict, or land case to obtain a settlement in accordance with the provisions of the Legislation and / or land policy In cases of multiple certified land disputes, the national land agency has the authority to conduct negotiating, mediating, and facilitating the handling of the disputing parties and drawing up an agreement between the parties. In order to minimize land disputes which in this case are caused by double certificates, the role played by the national land agency as a public servant in the land sector includes:⁹

1. Managing data to solve cases in the land sector
2. Collecting lawsuits, preparing response memory materials, preparing appeal memory, counter memory, cassation memory, cassation review memory of cases filed in court

9. Asmawat, Mediasi Salah Satu Cara Dalam Penyelesaian Sengketa Pertanahan, *Jurnal Ilmu hukum*, Vol 5 No 1 Maret 2014, page.54-66

- against individuals and legal entities that harm the state;
3. Collecting data on land problems and disputes;
 4. Reviewing and preparing draft decisions regarding land dispute resolution;
 5. To review and prepare the concept of cancellation of land rights with administrative defects based on the strength of court decisions;
 6. Documentation;

National land agencies also have certain mechanisms in handling and resolving land dispute cases, in this case including disputes due to double certificates, namely:

1. Land disputes are often recognized by the national land agency through complaints;
2. Complaints are then followed up with identification of problems. Confirm whether the problem element is under the authority of the national land agency or outside the authority of the national land agency;
3. If it is the jurisdiction of the national land agency, the national land agency assesses the problem concerned to prove the truth regarding the complaint and determines whether the complaint can be further processed;
4. If the problem is strategic, it is necessary to form a work unit. If it is political, social, and economic, the team will involve institutions such as the people's representative council or regional people's representative council, the Ministry of Home Affairs, or the relevant Regional Government;
5. The team compiles a research report to become a material for problem solving recommendations.

In practice, land dispute resolution is not only carried out by the national land agency, but can also be resolved through the General Courts and State Administrative Courts. The General Court focuses more on matters related to civil and criminal matters in land disputes, in contrast to the state administrative court which resolves land disputes related to decrees issued by national land agencies or other officials related to land.

Land disputes, in this case a double certificate, are resolved in three (3) ways, namely:¹⁰

1. Settlement Directly By Deliberation

Settlement of land disputes through deliberation has conditions, namely that the dispute is not a determination of ownership of land rights which can give rights or eliminate a person's rights to disputed land, and among the disputing parties still have kinship, and still adhere to local customary law.

2. Through Arbitration and Alternative

Arbitration is the settlement of a case by a person or several arbitrators who have

10. Prasetyo Aryo Dewandaru, Nanik Tri Hastuti, Fifiana Wisnaeni, *Penyelesaian Sengketa Tanah Terhadap Sertifikat Ganda Di Badan Pertanahan Nasional, Notarius*, Volume 13 Nomor 1 (2020), page 154-169

been appointed based on the agreement / agreement of the parties and it is agreed that the decision taken is binding and final. The main condition for being able to go through arbitration as a dispute settlement is that there is an agreement made in writing and approved by the parties

3. Dispute Resolution Dispute Resolution Through Court Channels

Dispute resolution, including land disputes, is regulated in Law Number 4 of 2004 concerning Judicial Power. Article 1 of the Law states that judicial power is the power of an independent State to administer justice to uphold law and justice. In accordance with the prevailing regulations, dispute resolution relating to ownership is submitted to the General Court, and disputes over land agency decisions are submitted to the realm of the State Administrative Court, and disputes regarding donated land are submitted to the Religious Court.

The cause of a double certificate can be due to an element of intent, unintentionally and due to administrative errors both internally and externally. A form of legal protection for buyers with good intentions but whose land is double certified can make a complaint to the National Land Agency through a mediation process which is a settlement process based on the principle of a win-win solution which is expected to be able to provide a satisfactory settlement and be accepted by all parties. If the settlement is not reached, then the plaintiff is welcome to file a lawsuit through the local District Court with a deadline of 90 days in accordance with the applicable provisions (Government Regulation Number 24 of 1997).¹¹

2. The following are factors that cause multiple certificates

In the process of making a land certificate, it will be preceded by land registration. The land registration system that is applied in practice in Indonesia adheres to an active system, meaning that if the land owner is active to register his land, then it will be propagated, and vice versa if the land owner is not active in registering his land then it is not registered or processed by the government. The more land is not registered at the National Land Agency Office, the more land problems will become and chaotic. It is said so because land that is not registered with the national land agency will not recorded in the data base, so it can be said that the land has no legal certainty, meaning that there is no guarantee of legal certainty.¹²

Double certificates generally occur on land that is still vacant or undeveloped. The emergence of multiple certificates is caused by several things. Because individuals working or outside the National Land Agency office, or because of overlapping letters or overlapping, and

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11. Iwan Permadi, Perlindungan Hukum Terhadap Pembeli Tanah Bersertifikat Ganda Dengan Cara Itikad Baik Demi Kepastian Hukum, *Yustisia*, Vol. 5 No. 2 Mei-Agustus 2016, page.448-467
 12. Mudakir Iskandar Syah, Sertifikat Tanah Ganda Akibat Lemahnya Data Base Pertanahan, *Jurnal Ilmiah Hukum Dirgantara*, Volume 4 No. 2, Maret 2014, page.44-56

because the land has been leased for too long by the owner, the lessee makes knowledge of the land, which is proven to contain untrue, falsehood or no longer valid. Whereas a double certificate is a certificate of ownership obtained either legally or illegally which at any time can give rise to a legal consequence (dispute) on the subject of rights and objects of rights. This double certificate is a certificate of ownership of land rights issued by a legal institution of the National Land Agency which is issued on one object of rights which overlaps one land object in part or in whole, which may result in legal consequences.¹³

Legal certainty regarding land rights is very important, as the mandate of the main agrarian law contains two dimensions, namely the certainty of the object of land rights and the certainty of the subject of land rights, namely the certainty of the location of land parcels with geo-reference coordinates in a land registration map and Subject certainty is indicated from the name of the land title holder listed in the land registration book at the land agency, where copies of the map and land registration book are known as Land Certificates.¹⁴

Certificate of land rights as the final result of the registration process of land rights including changes to the subject, status of the rights and legal actions committed against the land is a strong means of evidence as stated in the provisions of Article 19 paragraph (1) letter c, Article 23 paragraph (2), Article 32 paragraph (2) and Article 38 paragraph (2) of the main agrarian law. The following are factors that cause multiple certificates:¹⁵

1. There is no valid data base on detailed land at the National Land Agency Office. So that if the land is registered again, it can be seen that the land is certified.
2. The element of deliberate action of the land owner to re-register the certificate. This occurs because making a new certificate is easier and cheaper than transferring land rights. Whereas for the transfer of land rights must go through the PPAT Deed, PPAT with fees for the acquisition of rights to land and buildings in the amount of 5% of the Sales Value of the Tax Object / Sale and Purchase transaction price less the Selling Value of the Non-Taxable Object. Meanwhile, the Income Tax Fee Deposit is 5% of the Tax Object Selling Value / sale and purchase transaction price. Of the total expenditure, a new certificate must be added to the deed for the official issuing the land deed. So that one plot of land that is used as collateral to several banks with proof of different certificates but the same plot of land.
3. The negligence of the National Land Agency in implementing the registration map bywerken. Where each measurement of land parcels must be tied to the existing

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13. Rendra Onny Fernando Chandra Penyelesaian Sengketa Sertifikat Ganda Hak Atas Tanah Menurut Pp No.24/1997 Tentang Pendaftaran Tanah, *Dinamika Jurnal Ilmiah Ilmu Hukum*, Volume 26, Nomor 3, Februari 2020, page.358-371
 14. Agus Salim, Penyelesaian Sengketa Hukum Terhadap Pemegang Sertifikat Hak Milik Dengan Adanya Penerbitan Sertifikat Ganda, *Jurnal USM Law Review* Vol 2 No 2 Tahun 2019, page.174-187
 15. Mudakir Iskandar Syah, *Op. Cit*, page.44-56

technical base point and the placement of the plot of land must be drawn in the right position on the land registration map. Often due to inaccuracy there is a misplacement of the image or forgetting to not draw it on the Registration Map.

4. There are insufficient land registration maps covering the entire district, and many pictures of land parcels are not mapped. For now, there is a Base Map with the Land Office Computerism (LOC) application and an Autocad Map facility that can be used to bywerken maps, but the information presented is not very supportive.

Certificates are strong evidence and are not absolute / perfect proof according to the provisions of the main agrarian law and the implementing government regulations (government regulation Number 10 of 1961 and government regulation Number 24 of 1997). This means that the statements contained therein have legal force and must be accepted (by the judge) as true information as long as and as long as there is no means of evidence proving otherwise.¹⁶

a. Conclusion.

The implementation of double certificate dispute resolution carried out by the National Land Agency is seen from the dispute resolution process as non-litigation dispute resolution or outside the court. Legal provisions on land rights in Indonesia authorize Indonesian citizens to use a plot of land for certain interests. For foreign citizens, the authority of land rights is limited by laws and regulations governing land relations with people, the National Land Agency as an institution that has the authority to manage sectoral land has a settlement role through mediation after receiving complaints from the public regarding land dispute cases. The process of proving land dispute cases, in this case because a double certificate can go through a litigation settlement process, and non-litigation.

16. Arie S. Hutagalung, *Tebaran Pemikiran Seputar Masalah Hukum Tanah*, cet. 1, LPHI, Jakarta, 2005, page.81.

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