

Inconsistency of Land Objects Resulting from Certificate Splitting by Developers at the National Land Office of South Tangerang City

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Abstract. *Developers are developers run by individuals or legal entities engaged in the housing industry that builds, markets and procures land and/or land and buildings needed by the community/consumers. Developers can split their own certificates by registering the process with the local National Land Agency Office. The purpose of this study is to analyze: 1) Certificate splitting procedures carried out by developers at the South Tangerang City National Land Office. 2) Obstacles and solutions to the discrepancy between the results of certificate splitting issued by the South Tangerang City National Land Office. This type of research is empirical legal research. The approach method in this study is qualitative approach. The types and sources of data in this study are primary and secondary data obtained through interviews and literature studies. The analysis in this study is prescriptive. The results of the study concluded: 1) The procedure for splitting certificates carried out by developers at the National Land Office of South Tangerang City, namely first, the developer prepares the necessary documents, such as master certificates, land plot maps, and related permits. After that, the developer submits a certificate split application to the BPN, accompanied by the documents that have been prepared. The BPN then verifies the documents to ensure their completeness and validity. If necessary, the BPN will re-measure the land to ensure that the division is in accordance with the submitted plan. After the measurement is complete, the BPN makes a new land plot map and issues a new certificate for each divided land plot. This certificate is then submitted to the developer, who can then distribute it to the entitled party. Finally, the BPN records this certificate split in the land book and national archives, to maintain the validity and legal certainty of the land that has been divided. 2) The discrepancy in the results of the certificate splitting issued by the South Tangerang City National Land Office (BPN) can cause various obstacles, these obstacles are often caused by data inaccuracy, errors in land measurement, or lack of coordination between developers and BPN. To overcome these obstacles, several solutions can be applied. First, BPN must increase*

accuracy in the document verification and land re-measurement process, and ensure that all data is in accordance with conditions in the field. Second, stricter supervision and the use of more sophisticated technology, such as geographic information systems (GIS), can help improve accuracy and efficiency in the certificate splitting process. Third, better communication between developers, BPN, and related parties needs to be improved to ensure that each stage of the certificate splitting procedure runs smoothly and in accordance with regulations.

Keywords: Certificate; Developer; Land; National.

1. Introduction

Land is one of the gifts of God Almighty which can be used as a very important natural resource and plays a large role in human life. Land as a source of welfare, prosperity and life, and its management is the responsibility of the State as mandated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Which reads "The land and water and the natural resources contained therein are controlled by the State and used for the greatest prosperity of the people", which in turn became the basis for regulations in Law Number 5 of 1960 concerning Basic Agrarian Principles.¹

Humans generally need a decent place to live. Not infrequently, some people who already have sufficient income, especially millennials, currently choose to live in apartments or in housing often referred to as clusters. Currently, there are many places to live that offer a variety of residential units. However, it must be understood that every housing for us to live in must be clear who the developer is.

Based on the provisions of Article 28 E paragraph 1 of the 1945 Constitution of the Republic of Indonesia, it is clearly stated that one of the things guaranteed by the constitution is the right to choose a place of residence, where Article 28 E paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that:

"Every person is free to embrace religion and worship according to his religion, choose education and teaching, choose work, choose citizenship, choose a place to live in the territory of the country and leave it, and has the right to return."²

As stipulated in Article 16 paragraph 1 of Law Number 5 of 1960 concerning Agrarian Principles, in order to have land rights, the provisions of Article 19 of

¹National Land Agency, 2021, PTSL Technical Instructions Number 1/Juknis100.Hk.02.01/I/2021, BPN RI, Jakarta, p. 8.

²Sodiki, Ahmad; Mahfud MD, 2010, Comprehensive Manuscript of Amendments to the 1945 Constitution of the Republic of Indonesia. Constitutional Court of the Republic of Indonesia. Jakarta, p. 580

Law Number 5 of 1960 concerning Agrarian Principles apply, which regulates the registration of land rights, which was then followed up by Government Regulation Number 24 of 1997 concerning Land Registration (which was later updated by Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration).³In addition, the issue of building houses for residential purposes is specifically regulated in Law Number 1 of 2011 concerning Housing and Residential Areas, and it is stated in the provisions of Article 21 paragraph 1 that the types of houses are differentiated based on the development and occupancy actors which include commercial houses, public houses, self-help houses, special houses, state houses.⁴In the implementation of housing, it is known that in the process of organizing housing or residential areas, of course this can be carried out not only by the government, but also by the private sector. This is regulated in the Regulation of the Minister of Home Affairs Number 9 of 2009 concerning Guidelines for the Handover of Infrastructure, Facilities, and Utilities for Housing and Residential Areas in the Regions. The implementation of housing and residential area development, in the provisions of the Regulation of the Minister of Home Affairs Number 9 of 2009, is carried out by the Developer. The definition in Article 1 number 7, it is stated that the definition of Developer is an institution or agency that organizes housing and residential development.⁵

According to Article 5 paragraph (1) of the Minister of Home Affairs Regulation Number 5 of 1974, the definition of a Housing Development Company which can also be included in the definition of a developer is stated as:

"Housing Development Company is a company that operates in the field of housing development of various types in large quantities on a land area that is a unified residential environment equipped with environmental infrastructure and social facilities needed by the residents"⁶

The definition of a property developer is also explained in Government Regulation in Article 5 paragraph (1) no. 5 in 1974 concerning developers who are companies in the field of housing development and in large quantities. This housing development includes apartments and houses. Developers will be involved from the initial process, namely land purchase, construction stage to marketing the project to potential consumers. After successfully adding value to a property, property developers will realize their main goal, namely gaining profit with the values that have been invested in the building. Before gaining profit,

³Kaawoan and Johanis Edoard, 2021, Agrarian Law and Politics, Sam Ratulangi Press, p.42

⁴Utomo, Laksanto, 2021, Textbook of Agrarian and Property Law, Indonesian Law Study Institute. Jakarta, p. 84

⁵H Hazzadin, 2011, Legal Guidelines for Housing and Settlement Based on Areas, Ministry of Public Housing of the Republic of Indonesia. p. 3

⁶TIKAR Journal Volume 2 Number 2, July 2021 Page 108

developers must ensure that their rights and obligations to consumers have been carried out properly.⁷

Developers are developers run by individuals or legal entities engaged in the housing industry that builds, markets and procures land and/or land and buildings needed by the community/consumers. Most people who will buy land and buildings are focused on the name of the developer. This aims to provide a sense of security and calm when buying the land and building. In developing a housing development, one of the most important requirements for developers is to have a site plan. A site plan is a two-dimensional drawing that contains a plan or map that shows the details of the arrangement of a building on a piece of land or plot. Site plan drawings usually include information about the location of buildings, open spaces, road access, and other elements related to spatial planning in a particular area. Site plans are used in architectural planning and design, construction, and land development.⁸With a site plan, everything will be well planned. This image will later contain important and detailed information about the various plans that will be realized. A good planning image will certainly have a big influence on the success of the project development that will be carried out. If the development to be carried out does not have a site plan, the development can be constrained, one of which is when carrying out the certificate splitting process.

Several stages that must be passed when making a site plan, especially for housing developers. By following these stages, the site plan process can be carried out systematically and comprehensively to ensure that housing development meets applicable criteria and regulations and optimizes land use. The following are the stages that are generally needed in making a site plan:⁹

1. Location Selection

The selection of the area must meet certain criteria, namely by ensuring that the land is sufficient for the construction of houses, the construction of facilities and infrastructure, and the construction of public utilities. And most importantly, developers must also ensure that the land to be built is free from water pollution, air, noise, landslides, floods, aircraft tracks, volcanoes and ensure that the location is not included in a productive agricultural area. One thing that must also be met is that the development area must comply with the local Spatial Planning Plan (RTRW) or other applicable planning documents.

2. Planning Preparation

⁷<https://31sudirmansuites.com/what-is-a-property-developer-what-are-its-rights-and-obligations-to-consumers/> accessed on March 9, 2024 at 17.57 WIB

⁸<https://dwijayakarya.com/pengertian-site-plan-fungsi-contoh-dan-regulasi/> accessed on March 9, 2024 at 18.06 WIB

⁹ibid

This stage is the process of collecting technical data from the desired location, including geographical conditions, designation plans, topography, land value, land slope, earthquake potential, noise levels. Then the collection of local regulatory data including building boundary lines, maximum building height, basic coefficient, and building floors.

3. Plot Planning

The next step is the process of dividing the land into plots of a certain size. The developer must determine the minimum and maximum area of the plot, determine the width and length of the front of the plot, and adjust the area of the plot to the agreed house area requirements.

4. Site Plan Design

In designing a site plan, developers must determine the intensity of buildings on land, including the Basic Building Coefficient (KDB), Building Floor Coefficient (KLB), and Green Area Coefficient (KDH). Furthermore, calculate the comparison between the floor area of the building and the land area to control the density between buildings and population density. And consider green open spaces (green areas) as part of the planning.

5. Site Plan Approval

The last step is to submit a site plan approval application. The site plan approval application must be accompanied by the requirements that have been determined according to the regulations in force in each region. The requirements and mechanisms will differ in each region according to the regulations in force in that region. So make sure you check first before submitting a site plan approval application.

Spatial planning and systems in this site plan will affect aspects of the building. Such as aspects of comfort and building quality in the long term. In the process of dividing it and planning the building, there will be several provisions that must be set when designing a house site plan by following the following composition:¹⁰

1. Residential buildings are planned to be a maximum of 65 percent.
2. Building road access with a composition of 20 percent.
3. Open areas and public facilities with a composition of 10 percent.
4. Commercial Needs 5 percent.

After the site plan is approved, the developer then submits a solution.certificatein accordance with the site plan that has been approved by

¹⁰<https://www.gramedia.com/best-seller/site-plan-dalam-konstruksi/> accessed on March 9, 2024 at 18.33 WIB

the Spatial Planning Agency through the One-Stop Integrated Service (PTSP). The certificates of these housing developers are still in the form of global masters or commonly called master certificates with an area of thousands of square meters. Therefore, the division of certificates really requires a site plan. If there are 100 housing units in the site plan, then the fractional certificates issued by the National Land Agency are also 100 units. On the certificate, the position of each lot and the position of public facilities and social facilities (fasum fasos) that are not included in the certificate will be visible. Thus, the certificate has become a fraction in the name of developer and will be transferred to the consumer's name after the sale and purchase has taken place.

The National Land Agency is a non-ministerial government institution that has duties in the field of land with its work units, namely the Regional Office of the National Land Agency in each Province, Regency and City that registers land rights and maintains a general list of land registration. The institution was established based on the Decree of the President of the Republic of Indonesia Number 26 of 1988 which is tasked with assisting the president in managing and developing land administration, both based on the Basic Agrarian Law and other laws and regulations covering the regulation of use, control and ownership of land, control of land rights, land measurement and registration and others related to land issues based on policies set by the President.¹¹

The provisions regarding the division, separation, and merging of land areas are contained in Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration (PP No. 24/1997) and Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration (Permenag/Ka.BPN No. 3/1997). The division of land areas is regulated in detail in Article 48 of PP No. 24/1997 and Article 133 of Permenag/Ka.BPN No. 3/1997. PP No. 24/1997 and Permenag/Ka.BPN No. 3/1997 do not clearly state the definition of land division. However, based on the provisions in Article 48 paragraph (1) of PP No. 24/1997, it can be concluded that the division of a land plot is the division of a registered land plot into several parts at the request of the relevant rights holder. Based on Article 1 number 2 of PP No. 24/1997, a land plot is a part of the earth's surface which is a limited area unit.

Developers can split the certificate themselves by registering the process with the local National Land Agency Office so that the signing of the Deed of Sale and Purchase with prospective buyers is faster. The process of splitting the certificate involves the bank to cooperate and then make a cooperation agreement, one of which is a buy back guarantee.

¹¹Journal of Legal Science LEGAL AGREEMENT compiled by Meita Djohan Oe, July 2006

When developers work with banks, this is where the role of Notaries & PPAT in terms of certificate division will be greatly needed. Because when developers and banks cooperate in terms of division, the bank will ask the Notary and PPAT to make a statement letter or can be called a covernote explaining when the time needed to complete the division of the certificate. In reality, the process of dividing the certificate is still carried out by the developer, while the Notary and PPAT only monitor the progress of the division process by requesting a receipt for processing at the local National Land Agency Office.

It was found that the case in the field of the owner of the land title certificate for the house that he had occupied for more than 1 (one) year did not match the physical building. This was discovered when he was going to apply for financing at one of the banks and the certificate data mapping was carried out, the image of the certificate did not match between the database at the local National Land Agency Office and the physical land title certificate that had been received. The land title holder conducted an investigation and was asked by the National Land Agency Office to destroy the certificate due to the discrepancy with the data at the National Land Agency. The certificate owner blamed the Notary & PPAT who had helped with the resolution process, but the resolution was based on the site plan made by the developer.

2. Research Methods

The type of research that will be used is empirical legal research. Empirical legal research is a type of sociological legal research and can be referred to as field research, which examines the applicable legal provisions and those that have occurred in the life of society. Empirical legal is a research conducted on the actual situation or real conditions that have occurred in society with the intention of knowing and finding the facts and data needed,¹²namely to find out the problem being researched, which in this case is related to the inconsistency of the land object resulting from the division of the certificate by the developer at the National Land Office of South Tangerang City.

The approach method used in this study is a qualitative approach. A qualitative research approach is a process of research and understanding based on methods that investigate social phenomena and human problems. In this study, researchers create a complex picture, examine words, detailed reports and conduct studies in natural situations,¹³with a qualitative approach, it is hoped that it will be able to provide a detailed, systematic and comprehensive picture regarding the inconsistency of land objects resulting from the division of certificates by developers at the National Land Office of South Tangerang City.

¹²Bambang Waluyo, 2002, *Legal Research in Practice*, Sinar Grafika, Jakarta, p. 15

¹³Iskandar, 2009, *Qualitative Research Methodology*, Gaung Persada, Jakarta, p. 11

3. Results and Discussion

3.1. Certificate Splitting Procedures Carried Out by Developers at the National Land Office of South Tangerang City

In an effort to realize legal certainty and certainty of rights regarding land rights for land rights holders throughout Indonesia, which is one of the main objectives of the UUPA, the law instructs the Government to carry out land registration.

Land registration in Article 1 of Government Regulation Number 24 of 1997 is a series of activities carried out by the government continuously, sustainably and regularly, including the collection, processing, bookkeeping and presentation as well as maintenance of physical data and legal data in the form of maps and lists regarding land plots and apartment units, including the issuance of certificates as proof of rights for land plots for which rights already exist and ownership rights to apartment units and certain rights that burden them.

Land registration is carried out to ensure legal certainty and to meet the needs of the community and the government.¹⁴This is as stipulated in Article 19 of Law Number 5 of 1960 concerning the Basic Agrarian Principles (UUPA) that, land registration is carried out in order to guarantee the legal certainty of rechtskadaster or legal cadastre. In more detail the purpose of land registration is described in Article 3 of Government Regulation Number 24 of 1997 as follows:

1. To provide legal certainty and legal protection to the rights holders of a plot of land, apartment units and other registered rights, so that they can easily prove themselves as the rights holders in question. For this reason, rights holders are given a certificate as proof. This is the main purpose of land registration as mandated by Article 19 of the UUPA.
2. To provide information to interested parties, including the government, to easily obtain the data needed to conduct legal acts regarding registered land plots and apartment units. Data presentation is carried out by the Land Office in the Regency consisting of registration maps, land lists, measurement letters, land books and name lists. So that interested parties, especially prospective buyers or prospective creditors, before carrying out a legal act regarding a particular land plot or apartment unit need and therefore they have the right to know the data stored in the lists at the Land Office. This is in accordance with the principle of openness of land registration.
3. In order to implement orderly land administration, the implementation of proper land registration is a manifestation of orderly administration in the land

¹⁴*Ibid.*, p. 114

sector. To achieve such orderly administration, every plot of land and apartment unit, including transfers, encumbrances and deletions, must be registered.¹⁵

The issuance of certificates as a form of government support for citizens' rights to obtain legal certainty and protection. The provisions for issuing land ownership certificates are clearly regulated in Government Regulation Number 10 of 1961, especially in Article 13 Paragraph (3) that certificates are valid evidence of land rights. Physically, this land ownership certificate is in the form of a book and measurement letter that are sewn with a cover paper whose provisions are determined by the Minister of Land Affairs. Meanwhile, based on the replacement government regulation, namely Government Regulation Number 20 of 1997, it is explained that certificates are strong evidence of ownership as referred to in Article 19 Paragraph (2) Letter c of the Agrarian Law. The scope of proof with this certificate includes land rights, rights to housing units, management rights, waqf land, and mortgage rights. Certificates function as proof of rights both in terms of physical data and juridical. The information components contained in the certificate book include the certificate registration number, type of rights, rights holder and measurement letter, including information on changes and encumbrances of land rights.¹⁶

A land plot has been legally issued a certificate in the name of a person or legal entity who acquired the land in good faith and actually controls it, then other parties who feel they have rights to the land can no longer demand the implementation of these rights if within 5 (five) years from the issuance of the certificate, they do not submit a written objection to the certificate holder and the Head of the relevant Land Office or do not file a lawsuit with the Court regarding control of the land or the issuance of the certificate.

Land certificates are official documents issued by the National Land Agency (BPN) and serve as legal proof of ownership of land or buildings. As stipulated in Article 16 paragraph 1 of Law Number 5 of 1960 concerning Agrarian Principles, the provisions of Article 19 of Law Number 5 of 1960 concerning Agrarian Principles apply, which regulates the registration of land rights, which was then followed up by Government Regulation Number 24 of 1997 concerning Land Registration (which was later updated by Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration).¹⁷In addition, the issue of building houses for residential purposes is specifically regulated in Law Number 1 of 2011 concerning Housing and Residential Areas, and it is stated in the provisions of Article 21 paragraph 1 that the types of houses are differentiated based on the development and occupancy

¹⁵Dyara Radhite Oryza Fea, *op.cit.*, p. 94

¹⁶Novita Riska, Legal Analysis of Electronic Land Ownership Certificate (E-Certificate) to Achieve Legal Certainty, *Jurnal Signifikan Humaniora*, Vol. 2, No. 4 (2021) August, p. 4

¹⁷Kaawoan, Johanis Edoard, 2021, *Agrarian Law and Politics*. Sam Ratulangi Press. Sulawesi, p. 42

actors which include commercial houses, public houses, self-help houses, special houses, and state houses.¹⁸

Along with the rapid development of the property sector in South Tangerang City, the demand for residential housing continues to increase. This encourages developers to build housing on large areas of land. In housing development, developers start by acquiring a plot of land that usually has one master certificate. Once the housing is built, this master certificate must be split into individual certificates for each housing unit sold. Land certificates issued by developers are very important documents in the home buying process. Land certificates issued by developers play a very important role in ensuring legal ownership of a property. This certificate is legal evidence recognized by law, providing certainty of rights to owners and protecting them from potential disputes in the future. In addition, land certificates also increase the economic value of the property, because properties with valid certificates are more in demand in the market and facilitate the buying and selling process. For owners who want to access financing, land certificates can be used as collateral to obtain credit from banks. This certificate also guarantees the certainty of the area and boundaries of the land that are officially recorded, avoiding disputes with other parties. Finally, land certificates are an important requirement in processing various permits, such as Building Construction Permits (IMB), which are required for property development. Therefore, having a land certificate from a developer is a crucial step to ensure investment security and legal property ownership.

Regarding the legal certainty of developers in managing the Master Certificate, basically the developer cannot build a housing if the land object has not been fully released or purchased from the original owner, as stated in the provisions of Article 4 paragraph 1 of the Regulation of the Minister of Public Works and Public Housing (PUPR) Number 11/PRT/M/2019 concerning the Preliminary Sale and Purchase Agreement System (PPJB) for Houses, which states, "Developers who carry out Marketing as referred to in Article 3 paragraph (1) and paragraph (2) must have at least: a) Certainty of spatial designation; (have obtained permission from the regional government spatial planning office); b) Certainty of land rights; (has been carried out through land release, or compensation, and sale and purchase from the land owner); c) Certainty of House ownership status; (have obtained a certificate of land rights designated for house construction); d) Housing or Flat construction permits; and (have obtained a permit to build a house and building and paid taxes); e) Guarantee for housing or flat construction from a guarantee institution (which has a partnership with a banking institution).¹⁹

¹⁸Utomo, Laksanto, 2021, Textbook of Agrarian and Property Law, Indonesian Law Study Institute, Jakarta, p. 84

¹⁹Fernedy, Legal Certainty Regarding the Splitting of Master Land Certificates Related to Housing Developers Declared Bankrupt, Journal Of Legal Research, Volume 4, Issue 4, 2022, p.1025

The developer can take care of the procedure for splitting the main land certificate where to take care of the procedure for splitting the main land certificate themselves and without being represented by another person, and it is necessary to know what the requirements for splitting the certificate are. The procedure for splitting the land certificate is crucial because it is directly related to legal certainty for unit owners. Splitting the land certificate is important for several reasons:²⁰

1. By splitting the land certificate, each land or house will have its own certificate that clearly identifies individual ownership. This provides legal certainty for the owner of each unit and minimizes the risk of land disputes.
2. Splitting certificates facilitates the process of buying and selling, transferring rights, or guaranteeing to banks. Banks usually require certificates in the name of individual owners to secure loans, so splitting certificates is necessary for access to financing.
3. To take care of permits such as Building Construction Permits (IMB), land certificates usually have to be divided according to each unit. Without separate certificates, taking care of these permits can be more complicated and time-consuming.
4. In terms of property management, such as maintenance of shared facilities or administration of Land and Building Tax (PBB), a divided certificate makes it easier to divide responsibilities and calculate costs fairly among property owners.

The division of land certificates is regulated in various laws and regulations, including Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA), Government Regulation Number 24 of 1997 concerning Land Registration, and technical regulations from the National Land Agency (BPN). The process of dividing the certificate is carried out with the aim of transferring part of the land rights from the parent certificate to a new certificate that reflects the division of land objects that have been agreed upon.

Inconsistencies in land objects resulting from certificate splitting can occur due to several factors, including:²¹

1. Measurement Error

Land measurements that are inaccurate or do not comply with applicable standards can cause differences between the data on the certificate and conditions in the field.

2. Administrative Error

²⁰Interview with Mrs. Novita, BPN Officer, South Tangerang, August 2, 2024

²¹Interview with Mr. Dery, BPN Officer, South Tangerang, August 2, 2024

Errors in recording or processing data by BPN officers or developers can cause discrepancies in the certificate of results of the division.

3. Environmental Change

Changes in the physical condition of the land after subdivision, such as infrastructure development or shifting of natural boundaries, may result in discrepancies with the certificate data.

The impact of this mismatch can be very serious, including potential ownership disputes, difficulties in buying and selling land, and problems in managing permits such as Building Construction Permits (IMB). This mismatch can also cause economic losses for landowners and developers.

Some legal steps that can be taken to address land object discrepancies include:

1. Re-Measurement

The BPN can re-measure the land in question to ensure that the data listed in the certificate corresponds to conditions in the field.

2. Certificate Repair

If errors are found, certificates that have been issued can be corrected through appropriate administrative procedures.

3. Mediation and Dispute Resolution

If a dispute arises due to a discrepancy, mediation between the parties involved can be carried out to find a fair solution without having to go through a lengthy litigation process.

4. Strengthening Supervision

Tighter supervision of the certificate splitting process by developers and the implementation of BPN duties is needed to prevent future non-conformities.

The inconsistency of land objects resulting from certificate splitting by developers at the South Tangerang City National Land Office is a serious problem that requires immediate and appropriate handling. Legally, this problem can cause legal uncertainty and have a negative impact on land owners and developers. Therefore, preventive measures such as accurate measurements, strict supervision, and administrative improvements must be prioritized to maintain legal certainty and public trust in the land system in Indonesia.

Radbruch's theory of legal certainty underlines the importance of positive, fact-based, clearly formulated, and stable law in the context of land certificate splitting procedures. In practice at the South Tangerang City National Land Office, these principles must be applied to ensure that the certificate splitting

procedure by developers runs smoothly and in accordance with applicable laws. Legal certainty in this procedure not only protects the rights of landowners and developers, but also strengthens public trust in the legal and land administration system in Indonesia. Uncertainty in the certificate splitting procedure can cause various legal problems, including ownership disputes, delays in property transactions, and difficulties in accessing financing. If the procedure is not carried out properly or there is an unreasonable delay, property owners may face the risk of losing their land rights or having difficulty selling or using the property as collateral for credit. This can damage public trust in developers and government institutions, and reduce the attractiveness of investment in the housing sector.

3.2. Obstacles and solutions to the discrepancy between the results of the certificate splitting issued by the National Land Office of South Tangerang City

The creation of legal certainty regarding land rights requires a strong legal foundation. The legal foundation related to agrarian issues in Indonesia is generally regulated in Law Number 5 of 1960 concerning Basic Agrarian Principles, better known as the Basic Agrarian Law (UUPA). The term agrarian according to UUPA has a meaning not only limited to land, but also includes the earth, water and natural resources contained therein. Even according to BoediHarsono, outer space is also included in it, where the earth and water contain energy and elements that can be used for efforts to maintain and develop the fertility of the earth, water and natural resources and other things related to these things.²²

Providing guarantees of legal certainty in the land sector requires:

1. The availability of complete and clear written legal instruments that are implemented consistently.
2. Implementation of effective land registration.

With the availability of written legal instruments, anyone who is interested will easily know what possibilities are available to him to control and use the land he needs, how to obtain it, what rights, obligations and prohibitions there are in controlling land with certain rights, what sanctions he will face if he ignores the relevant provisions, and other matters related to the control and use of the land he owns.²³

Application for land rights division is made at the District/City Land Office according to the location of the land. The result of the land division will produce

²²Rahmat Ramadhani, Guarantee of Legal Certainty Contained in Land Rights Certificates, *Journal De Lega Lata*, Volume 2, Number 1, January – June 2017, p.139

²³Budi Harsono, 2007, *Indonesian Agrarian Law. History of the Formation of the Basic Agrarian Law, Contents and Implementation*, National Land Law Volume I, Djambatan, Jakarta, p. 69.

a land plot with a new certificate number and Field Identification Number (NIB).²⁴

In South Tangerang City, a case was found where the owner of the land title certificate for a house that he had occupied for more than 1 (one) year did not match the physical building. This was discovered when he was going to apply for financing at a bank and the certificate data mapping was carried out, the image of the certificate did not match the database at the National Land Agency Office. The discrepancy between the results of the certificate breakdown issued by the National Land Office (BPN) can cause a number of legal consequences that affect various parties, including land owners, buyers, developers, and even the BPN itself. These legal consequences cover various aspects such as legal certainty, ownership rights, sales transactions, and potential disputes. The following are some of the legal consequences that arise:

1. Legal Uncertainty

Inconsistencies in land certificates cause legal uncertainty regarding the ownership status and boundaries of the land. Land certificates are documents that should provide legal certainty regarding land rights, including area, boundaries, and location. Inconsistencies in the certificate can cast doubt on its validity, thus disrupting the legal certainty that the certificate should provide.

2. Land Ownership Dispute

Data discrepancies between the certificate and the land conditions in the field can lead to ownership disputes. For example, if the land area in the certificate does not match the actual land area, the landowner or other interested parties can question the validity of the ownership. This dispute can involve various parties and end in legal proceedings in court.

3. Certificate Cancellation or Correction

If the discrepancy is significant, the land certificate that has been issued can be canceled or corrected through administrative or legal processes. Landowners or aggrieved parties can apply to the BPN to re-measure and correct the incorrect certificate. This process can be time-consuming and expensive, and has the potential to hinder ongoing transactions or development.

4. Difficulties in Land Sale and Purchase Transactions

Certificate inconsistencies can complicate land sale and purchase transactions. Potential buyers may hesitate to proceed with a transaction if there are inconsistencies in the certificate, as they are concerned about legal issues that

²⁴Kartini Muljadi and Gunawan Widjaja, 2005, Property Law Series: Mortgage Rights, Prenada Media, Jakarta, p. 160

may arise later. This can be detrimental to the seller, especially if the land is already earmarked for sale or further development.

5. Legal Responsibilities of Developers and BPN

Developers and BPN can be held legally responsible for any discrepancies that occur. Developers may be considered negligent if they do not ensure that the land sold is in accordance with the certificate issued. BPN can also be held responsible if the discrepancy is caused by errors in measurement or recording. Both parties can be sued to correct the error or provide compensation to the injured party.

6. Compensation

Parties who are harmed by a certificate discrepancy, such as landowners or buyers, can claim compensation from the responsible party, whether the developer or the BPN. This compensation can include costs incurred to repair the certificate, financial losses due to failed transactions, or other losses resulting from the discrepancy.

7. Impact on Development Projects

Certificate inconsistencies can disrupt ongoing development projects. For example, the construction of housing or other infrastructure can be hampered if there is a dispute or legal uncertainty regarding the status of the land. This can lead to project delays, increased costs, and potential financial losses for developers.

The discrepancy in the results of the certificate splitting issued by the South Tangerang City National Land Office has significant legal impacts. This impact not only affects legal certainty and land ownership rights, but also has the potential to cause disputes, hinder land transactions and development, and cause financial losses. Therefore, it is important for the BPN and developers to ensure that the certificate splitting process is carried out accurately and in accordance with applicable legal provisions to avoid adverse legal consequences.

Obstacles and inconsistencies in the results of the land certificate splitting issued by the National Land Office (Kantah) of South Tangerang City can arise due to various factors, both from the technical, administrative, and legal sides. The following is a description of these obstacles and the solutions that can be taken:²⁵

1. Land Area and Boundary Discrepancies

²⁵Interview with Mrs. Novita, BPN Officer, South Tangerang, August 2, 2024

This discrepancy can be caused by measurement errors, undetected physical changes in the soil, or differences in interpretation of land boundaries. The solution is:

- a. Using advanced mapping technology such as drones and GPS to ensure more accurate measurements. Re-measurement by the Kantah team with more modern methods can reduce errors.
- b. Holding mediation meetings with bordering parties to agree on the actual land boundaries and correcting certificates that have been issued.

2. Error in Certificate Document

Administrative errors such as writing names, land identification numbers, or other information that does not match the original data. The solution is:

- a. Submit a revision request to Kantah by attaching the correct supporting documents. Kantah needs to provide a fast track for the correction of this administrative error.
- b. Implement a double verification system before certificates are issued to minimize data input errors.

3. Land Disputes with Third Parties

Third parties may file claims or objections to the division of certificates, either due to inconsistencies in land boundaries or disputed ownership rights. The solutions are:

- a. Utilize mediation or arbitration mechanisms provided by Kantah or independent institutions to resolve disputes without having to go through lengthy court processes.
- b. If mediation is unsuccessful, the dispute can be resolved through the courts by submitting evidence of legal ownership and measurement.

4. Long Certificate Cracking Process

The length of the process can occur due to complicated bureaucracy, lack of human resources at Kantah, or technical problems in the electronic service system. The solution is:

- a. Kantah needs to optimize digital-based services to accelerate the certificate resolution process, including improving the e-BPN system to be more efficient.
- b. Developers can monitor and report periodically to Kantah regarding the status of certificate resolution to prevent delays.

5. Errors in Payment of Taxes and Administration Fees

Mismatch in the calculation of Land and Building Acquisition Fee (BPHTB) or other taxes resulting in the delay of the division process. The solution is:

- a. Recalculate with the Tax Office and submit corrections if there are errors. Developers can also consult directly with tax experts or the Tax Office to ensure all payments are correct.
- b. Using an integrated payment system provided by Kantah to minimize errors and ensure all taxes and administration fees are paid as required.

6. Ambiguity in New Regulations or Policies

Changes in regulations or new policies that have not been fully understood or implemented correctly by Kantah or the developer. The solution is:

- a. Kantah needs to conduct outreach and training to officers and developers regarding the new regulations in effect.
- b. Developers must proactively consult with Kantah or land law experts regarding the latest regulations to ensure the certificate splitting process is in accordance with applicable provisions.

By understanding these obstacles and implementing appropriate solutions, developers and related parties can reduce the risk of discrepancies in certificate splitting results, so that the land administration process runs more smoothly and in accordance with applicable regulations in 2024.

Legal protection is providing protection for human rights (HAM) that are harmed by others and that protection is given to the community so that they can enjoy all the rights granted by law. Law can be used to realize protection that is not only adaptive and flexible, but also predictive and anticipatory. Law is needed for those who are weak and not yet strong socially, economically and politically to obtain social justice.²⁶

Legal protection aims to provide assurance that the rights held by citizens are not violated and that there is a fair and effective mechanism to resolve disputes that arise. Philipus M. Hadjon stated that legal protection can be divided into two types, namely preventive legal protection and repressive legal protection. Both function to protect individual rights and maintain justice in the application of the law. In the context of a legal review of the inconsistency of land objects resulting from the division of certificates by developers at the National Land Office of South Tangerang City, this theory has significant relevance in understanding how the law operates to prevent and resolve legal problems that arise.

1. Preventive Legal Protection

²⁶Satjipto Raharjo, 2000, Legal Science, PT. Citra Aditya Bakti, Bandung, p. 55

Preventive legal protection aims to prevent violations of the law or disputes before they occur. In cases of inconsistency of land objects resulting from certificate division, several relevant preventive steps include:

- a. The National Land Office (BPN) must implement clear, transparent, and statutory procedures in the certificate splitting process. This includes strict verification of data submitted by developers, accurate land measurements, and issuance of certificates that are in accordance with the physical conditions of the land in the field.
- b. Strict supervision of the certificate-splitting process by BPN and developers can prevent errors or discrepancies. This includes internal and external audits of the land measurement, recording, and issuance processes.
- c. Providing education to BPN officers, developers, and the public regarding the importance of compliance with legal procedures and accuracy in land documents is also an important preventive step to prevent errors that can lead to land object discrepancies.

2. Repressive Legal Protection

Repressive legal protection is applied when a violation of the law or a dispute has occurred, and focuses on resolving the problem and restoring the rights that have been violated. In the case of a mismatch of the land object resulting from the division of the certificate, repressive protection can involve:

- a. The party who is harmed by the inconsistency in the land certificate has the right to file an objection or lawsuit. This can be done through administrative channels by submitting a request for correction to the BPN, or through the courts if administrative resolution is inadequate.
- b. If any discrepancies are found, the BPN can be ordered by the court to re-measure the land and correct the certificates that have been issued. This is a form of legal recovery that aims to restore conditions in accordance with the rights that should be owned by the injured party.
- c. If the non-compliance causes financial or material losses to the landowner or other parties involved, they can claim damages or compensation from the responsible party, such as the developer or even the BPN if negligence is found in the procedure.

Preventive protection aims to prevent errors and disputes, while repressive protection focuses on restoring violated rights after the error has occurred. The implementation of both forms of protection at the South Tangerang City National Land Office is important to ensure that the certificate splitting process runs correctly and in accordance with the law, as well as to provide justice for all parties involved.

4. Conclusion

The certificate splitting procedure carried out by the developer at the South Tangerang City National Land Office is first, the developer prepares the necessary documents, such as the master certificate, land plot map, and related permits. After that, the developer submits a certificate splitting application to the BPN, accompanied by the documents that have been prepared. The BPN then verifies the documents to ensure their completeness and validity. If necessary, the BPN will re-measure the land to ensure the division is in accordance with the submitted plan. After the measurement is complete, the BPN makes a new land plot map and issues a new certificate for each land plot that is split. This certificate is then submitted to the developer, who can then distribute it to the entitled parties. Finally, the BPN records this certificate split in the land book and national archives, to maintain the validity and legal certainty of the land that has been split. The discrepancy in the results of the certificate splitting issued by the South Tangerang City National Land Office (BPN) can cause various obstacles, including legal uncertainty, ownership disputes, and difficulties in land sale and purchase transactions. These obstacles are often caused by data inaccuracy, errors in land measurement, or lack of coordination between developers and BPN. To overcome these obstacles, several solutions can be applied. First, BPN must increase accuracy in the document verification and land re-measurement process, and ensure that all data is in accordance with conditions in the field. Second, stricter supervision and the use of more sophisticated technology, such as geographic information systems (GIS), can help improve accuracy and efficiency in the certificate splitting process. Third, better communication between developers, BPN, and related parties needs to be improved to ensure that each stage of the certificate splitting procedure runs smoothly and in accordance with regulations. By implementing these solutions, it is hoped that discrepancies in the results of certificate splitting can be minimized, so that legal certainty and smooth land transactions can be guaranteed.

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