

THE RESPONSIBILITY OF THE NATIONAL LAND AGENCY FOR THE ISSUANCE OF CERTIFICATE BREAKDOWN WHOSE PARENT CERTIFICATE HAS NOT BEEN SPLIT

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ABSTRAK

Multiple certificates, namely a plot of land that has more than one certificate, causing legal uncertainty for holders of land rights which is highly undesirable in land registration in Indonesia. The purpose of this study, among other things, is to find out and analyze the responsibility of the National Land Agency when it was discovered that there were multiple certificates based on Decree Number: 177/Pdt.G/2022/PN Tjk. The research method uses a normative and empirical juridical approach. This case of multiple certificates can occur because the main certificate has not been mapped, so when an online check is carried out through an application it cannot be read, resulting in the re-creation of the certificate either partially or wholly on the same land by another party. If there are several certificates, the responsibility of the National Land Agency is to assist in mediation between certificate holders. If it cannot be resolved through mediation, the National Land Agency will help direct it to a settlement in the District Court or State Administrative Court because it is the State Administrative Court or District Court that can decide whether or not the certificate is cancelled.

Keywords: Double Certificate; Responsibility; National Land Agency.

INTRODUCTION

This Basic Agrarian Law is an implementation of Article 33 paragraph (3) of the 1945 Constitution which provides the foundation that the earth, water and natural resources contained therein are controlled by the State and used to the greatest extent for the prosperity of the people (Wahyu Nugroho et al., 2017). This is confirmed by Article 2 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles concerning the right to control from the State (Number, 5 C.E.). Land is a gift from God Almighty, as well as one of the most important natural resources for the survival of mankind (Helfaya et al., 2018). Historical facts show that human survival, both as individuals and as social beings always requires land to meet their needs by making relationships and utilizing land resources, both on the surface and in the ground (Briassoulis, 2020).

Human life continues to develop in line with the development of human civilization itself (Jokilehto, 2017). As a result of population growth, population movement is rapid development along with the times (Hansen, 2018). Meanwhile, on the other hand, the land area and natural wealth it contains are relatively fixed and limited when compared to the high percentage of population movement and the increasing population (Zhou et al., 2023). Therefore, there is a need for legal rules that regulate land issues

(Zainuddin, 2021). Where the rule of law aims to protect the interests of all mankind and ensure legal certainty in the land sector (Rainoer; Sulistiyono Ayu Rachmi, 2016).

Land regulations have been regulated in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (Number, 5 C.E.). As a basic regulation, Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles regulates the principles or main issues of national land law (Dharsana et al., 2023). Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles is an implementation of Article 33 paragraph (3) of the 1945 Constitution which provides the foundation that the earth, water and natural resources contained therein are controlled by the State and used to the greatest extent for the prosperity of the people. This is confirmed by Article 2 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles concerning the right to control from the State.

The general explanation of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles in detail aims to:

1. Lay the foundations for the drafting of national agrarian law, which is a tool to bring prosperity, happiness and justice to the State and the people in the framework of a just and prosperous society;
2. Lay the foundations for unity and simplicity in land law;
3. Lay the foundations for providing legal certainty regarding land rights for the people as a whole.

In order to provide a legal position as a strong evidentiary tool and ensure legal certainty for certificate holders, preventive measures are taken before the issuance of certificates to prevent overlapping interests (Wolf et al., 2015). Along with the high value and benefits of land, many people try to obtain evidence of illegal and unlawful land ownership, including having proof of land ownership in protected forest areas (Purnomo et al., 2017). In human life, the existence of land will not be separated from all human actions itself, because land is a place, for humans to live and continue their lives (Marx, 2016). Therefore, land is needed by every member of the community so that disputes often occur among others, especially those involving land (Demsetz, 2013). For this reason, rules are needed that regulate the relationship between humans and land (Lubis & Ramadhani, 2021).

Based on Article 32 paragraph (2) of the Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration is amended into Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats Units, and Land Registration which reads: "In the event that a piece of land has been validly issued a certificate in the name of the person or legal entity who acquired the land in good faith and actually controls it, then another party who feels that he has a right to the land can no longer claim the exercise of the right if within 5 (five) years from the issuance of the certificate has not filed a written objection to the certificate holder and the Head of the Land Office concerned or does not file a lawsuit to the Court regarding the control of the land or the issuance of the certificate can be transferred and transferred, switching means the transfer of title to land from the owner to another party due to a legal event. With the death of the landowner, his title legally passes to his heirs as long as his heirs qualify as subjects of the Right of Ownership. Transfer means the transfer of ownership rights to land from the owner to another party due to a legal act. Examples of legal acts are buying and selling, exchanging, grants, participation (income) in company capital or auctions.

Legal certainty of land rights, especially regarding land ownership and control will provide clarity about the person or legal entity who is the holder of land rights, as well as certainty about the location, boundaries, extent and so on (Chandra, 2019). Regarding this certainty, it is very meaningful, especially in relation to planning the development of an area, supervising land ownership and land use (Waddell, 2016). To achieve this goal, based on Article 2 paragraph (2) of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, the authority of the State in the land sector has the right to control the entire territory of the Republic of Indonesia over the earth, water and space and the natural resources contained therein, with the authority to:

1. Regulate and administer the allocation, use, supply and maintenance of the earth, water and space;
2. Determine and regulate the legal relations between people and earth, water and space;

3. Determine and regulate legal relations between persons and deeds concerning earth, water and space.

The definition of a certificate is a valid and authentic evidence. By having a certificate, it can provide certainty and legal protection for holders of land or property rights and avoid legal problems in the future. There are examples of problems that occurred in Bandar Lampung City based on decision number: 177 / pdt. G/2022/PN.Tjk that Plaintiff Sri Aryani is a resident of Bandar Lampung City.

That the Plaintiff has purchased a piece of arable land and planting on it from Brother Surat Kamidi Kawiyeem with an area of $\pm 20 \times 20 \text{ M}^2 = 400 \text{ M}^2$ located in Sukarame I Village, Sukarame District, based on the Certificate of Indemnity Cultivation Number: 5935.193.02.2.XII.96 dated December 2, 1996. Then the Plaintiff bought a piece of arable land with planting growing on it from Brother Usman Ali with an area of $\pm 10 \times 20 \text{ M}^2 = 200 \text{ M}^2$ located in Bandar Lampung City based on the Certificate of Indemnity Cultivation Number: 592.02.18.71.08.1001.1.09 dated July 5, 1997. That the Plaintiff has controlled the arable land since 1996 which was purchased by the Plaintiff from Brother Surat Kamidi Kawiyeem and Brother Usman Ali with a total area of $\pm 600 \text{ M}^2$ located on Jalan Perum Permata Biru, Bandar Lampung City. Then the Plaintiff bought a piece of land based on the Deed of Sale and Purchase Number: 71 / PPAT / V / Sukarame / 2004 dated May 17, 2004 for the use of a private road for access in and out of residence / residence and built a boarding house for a business area of 134 M^2 based on the Certificate of Building Use Rights Number: 02587 / S.I and Measuring Letter Number : 937 / Sukarame I / 2002, because the land purchased from Brother Surat Kamidi Kawiyeem does not have road access.

In 2018 the Plaintiff was verbally reprimanded by Defendant II, Defendant III, and Defendant IV by showing SHM No. 00781 / KD Year 1977 with an area of 4,320 M² which basically the land and house building owned by the Plaintiff are still included in SHM No. 00781 / KD Year 1977. That on the basis of reprimands from Defendant II, Defendant III, and Defendant IV, in 2018 the plaintiff checked the plot of land that had been controlled. The results of the check of the plot of land a quo were still included in SHM 00781/KD in 1977. Finally, the Plaintiff and Defendant II, Defendant III, and Defendant IV took the path of settlement by deliberation, which finally agreed that the Plaintiff bought half of the land owned by Defendant II, Defendant III, and Defendant IV which is currently controlled by the Plaintiff with land book No: 1694/SI. B (formerly Number: 781 / Kd dated May 9, 1977) covering an area of 4,320 M² with a mutually agreed price of Rp 250,000,000.00 (two hundred fifty million rupiah). The sale and purchase was carried out before a Notary / Land Deed Making Officer domiciled in Bandar Lampung City dated December 4, 2020 under number 148 / 2020.

Previously, the land plot with Land Book No. 781/Kd dated May 9, 1977 with an area of 4,320 M² belonged to brother Suradi, which was then sold to brother Mulyadi on August 23, 1989, then on May 25, 1990 the land was again transferred to Suadara Shabu Riswan with a sale and purchase carried out with brother Mulyadi. That when brother Shabu Riswan had obtained the Certificate of Property Rights / Land Book, then collateralized at the Bank, in 2011 and in 2019 finally the land passed to the children of Brother Shabu Riswan as the heirs of brother Shabu Riswan, the heirs consisted of Brother Yullie (Defendant II) who was the wife of Sdr. Shabu Riswan, Tessar Tanius (Defendant III) is the son of Brother Shabu Riswan, and Nastessie Tanjung (Defendant IV) is the son of Brother Shabu Riswan.

The beginning of the dispute between the Plaintiff and Defendant I occurred around 2021, that Defendant I had built the foundation and fenced on the Plaintiff's land and hoarded the Plaintiff's land without the Plaintiff's permission. That the Plaintiff had reprimanded Defendant I for building the foundation and fencing on the Plaintiff's land, but Defendant I denied and admitted that he had purchased the land a quo on the basis of having a Certificate of Ownership Number 12717/S.I dated March 12, 1998 with an area of $\pm 686 \text{ M}^2$ located in Bandar Lampung City. That to date, the Plaintiff has never sold the land, either in part or in whole to any party including to Defendant I. That to date, Defendant I has hoarded land and built houses on Plaintiff's land without Plaintiff's consent or without a legal transfer of land tenure (Pellissery et al., 2023). That the actions and deeds of Defendant I who have controlled and built on the land a quo unlawfully and contrary to the provisions of the applicable law are Unlawful Acts, of

course cause enormous losses to the Plaintiff, resulting in the Plaintiff being unable to control the land a quo (Hutchinson, 2023).

In accordance with Article 19 of Law Number 5 of 1960, it is explained that there is an obligation that must be carried out by the government as the highest agency to carry out resistant registration in order to ensure legal certainty to land owners in terms of location, boundaries, and land area, land status, objects entitled to land and the provision of proof of rights in the form of certificates. Based on the provisions of Article 19 of Law Number 5 of 1960, property rights, business use rights, building use rights including the transfer and elimination of rights and their encumbrance with other rights must be registered, as a duty that must be carried out for the holders of these rights to register the land they own in order to obtain legal certainty as the owner of the rights, so that the owner of these rights knows clearly about the situation, location, boundaries and area of land owned.

For this reason, it is clear that the granting or determination of land rights can only be carried out by the State through the government (in this case it is carried out by the agency of the National Land Agency of the Republic of Indonesia), for that the provision of legal certainty guarantees for land rights for the people is entirely one of the main objectives of Law Number 5 of 1960 which is no longer negotiable, so that the law instructs the government to establish land registration throughout the territory of Indonesia that is rechtskadaster in nature which aims to ensure legal certainty and certainty of rights. Thus, it is authorized to the holder of land rights to utilize the land in accordance with its designation (Lubis & Ramadhani, 2021).

The issuance of double certificates can lead to legal uncertainty for holders of land rights that are highly unexpected in land registration in Indonesia (Kurniati & Mordekhai, 2021). Double certificates often occur which results in disputes between certificate holders who accuse each other that what they have is true even though then one of the certificates is fake where the object listed on the certificate is not the real one, so to get legal certainty about land title certificates, one of the certificate holders must ask the National Land Agency why it can arise double certificates and hold accountable on the part of the National Land Agency.

Based on the background that the author has described above, the author is interested in raising research by analyzing and finding out about the responsibility of the National Land Agency when it knows of double certificates based on Decision Number: 177/Pdt.G/2022/PN Tjk.

METHOD

The problem approach to be used in this study is a normative juridical approach and an empirical approach. Normative juridical approach, which is an approach by seeing legal problems as rules that are considered in accordance with normative juridical research. This normative juridical research is carried out by library research on theoretical matters, namely an approach carried out by studying legal principles in undergraduate theory / opinions and applicable laws and regulations. Meanwhile, the empirical approach is an approach carried out by seeing and observing directly the object of research regarding legal protection due to the sale and purchase of land, some of which have been issued but the master certificate has not been broken and the responsibility of the National Land Agency when it knows of double certificates based on Decision Number: 177 / Pdt.G / 2022 / PN Tjk.

Types and Techniques of Data Collection, namely using Primary Legal Material by direct observation and interview of the object of research and Secondary Legal Material with secondary data collection researchers using library research, by reading, studying, quoting and reviewing literature that supports laws and regulations and reading related to the problem to be discussed, and Tertiary Legal Materials which are complementary in nature to provide additional

instructions or explanations to primary and secondary legal materials. The tertiary legal material contained in this study is from legal dictionaries and large dictionaries Indonesian.

Data analysis in this study was carried out in a qualitative juridical manner, namely by describing it in the form of explanations and sentence-by-sentence descriptions that are easy to read and understand to interpret and draw conclusions to answer research problems. Data analysis is carried out in a qualitative descriptive manner, meaning that the results of this study are described in the form of explanations and sentence descriptions that are easy to read, understandable to interpret and draw conclusions. Drawing conclusions is carried out deductively which is a general description of problem answers based on research results and dynamically validated or answering research questions.

RESULTS AND DISCUSSION

The responsibility of the National Land Agency for the issuance of double certificates based on Decision Number: 177/Pdt.G/2022/PN Tjk.

The National Land Agency is a government agency in charge of land issues in Indonesia. This refers to Presidential Decree Number 26 of 1988 concerning the National Land Agency, where the Presidential Decree is the initial legal basis or milestone for the establishment of the National Land Agency in Indonesia, in Article 1 of Presidential Decree Number 26 of 1988 concerning the National Land Agency it is stated that:

- a) The National Land Agency, hereinafter referred to as the Land Agency, is a Non-Departmental Government Institution domiciled under and directly responsible to the President.
- b) The Land Agency is headed by a Chief.

As stipulated in Article 1 paragraph (1) of Presidential Decree Number 26 of 1988 concerning the National Land Agency, that the National Land Agency includes Government institutions that are not part of the Department, it is also stated that the National Land Agency is an institution that has direct responsibility to the President. The National Land Agency in its establishment was then given duties, functions and authorities based on laws and regulations. In its development, the legal basis of the National Land Agency has now been regulated through a Presidential Regulation, and it can be interpreted that the legal basis of the National Land Agency no longer uses the Presidential Decree which was the initial legal basis for the formation of the National Land Agency.

Based on Presidential Regulation Number 20 of 2015 concerning the National Land Agency, the definition of the National Land Agency is described differently from that contained in Article 1 of Presidential Decree Number 26 of 1988 above. Article 1 of Presidential Regulation Number 20 of 2015 concerning the National Land Agency states that:

- a) The National Land Agency hereinafter referred to as the National Land Agency is a Non-Ministerial Government Institution under and responsible to the President.
- b) The National Land Agency is headed by a Chief. Based on the above understanding, it can be seen that what distinguishes it from the understanding of the National Land Agency based on a Presidential Decree is related to its mention.

Article 1 paragraph (1) of Presidential Regulation Number 20 of 2015 has stated that the National Land Agency is BPN, while in Article 1 point (1) of Presidential Decree Number 26 of 1988 it still refers to the National Land Agency as the Land Agency only. While related to the

responsibility of the National Land Agency to the president, it still applies equally both to the Presidential Decree and to the Presidential Regulation.

According to the results of the author's research at the National Land Agency of Way Kanan Regency, the responsibility of the National Land Agency when it knows of a double certificate is based on Decision Number: 177/Pdt.G/2022/PN Tjk. When there is a Double Certificate, the form of responsibility of the National Land Agency is to assist in mediation between Certificate owners. If it cannot be resolved through mediation, the National Land Agency will assist in directing the settlement to the District Court or State Administrative Court. In the administration of government affairs in which there are elements of maladministration and harm to citizens, if there are criminal elements in the government, then the responsibility and responsibility are imposed on the person who committed criminal responsibility. If an element of unlawful conduct is found in the maladministration, a civil lawsuit can be filed against the official. However, if maladministration is not found, despite unlawful acts, then the payment of damages becomes institutional responsibility. The National Land Agency / ATR is responsible for claims in Court related to a piece of land that has 2 (two) certificates, thus bringing legal uncertainty to land rights holders and experiencing administrative legal defects in its issuance. Legal flow if there is a double certificate complaint to the National Land Agency, the National Land Agency will invite both parties or both certificate owners to mediate. If no agreement is found or no settlement is obtained, the National Land Agency will assist in being directed to the State Administrative Court, which can decide whether the Certificate is void or not, namely the State Administrative Court.

From the results of the Author's Analysis, double certificate cases like this can occur because the parent certificate has not been plotted, so when checking online through the application it is illegible. The National Land Agency is responsible for the administration of the payment of certificates that have been duplicated after going through the channels of the State Administrative Court to adjudicate them. Then absolute accountability for the occurrence of overlap

(overlapping) land ownership as a result of inaccurate land registration system. Accountability on the part of the National Land Agency / ATR to minimize disputes, namely by direct settlement by parties with deliberation carried out outside the court involving Village Heads / Lurah and Traditional Leaders and dispute resolution through judicial bodies.

CONCLUSION

When there is a Dual Certificate, the form of responsibility of the National Land Agency is to assist in mediation between Certificate owners. If it cannot be resolved through mediation, the National Land Agency will help direct the settlement in the District Court or the State Administrative Court because the one who can decide whether the Certificate is void or not is the State Administrative Court. This double certificate case can occur because the parent certificate has not been plotted, so when checking online through the application it is illegible. In the administration of government affairs in which there are elements of maladministration and harm to citizens, if there are criminal elements in the government, then the responsibility and responsibility are imposed on the person who committed criminal responsibility. If an element of unlawful conduct is found in the maladministration, a civil lawsuit can be filed against the official. However, if maladministration is not found, despite unlawful acts, then the payment of damages becomes institutional responsibility.

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