



Issuance of multiple land rights certificates which cause legal uncertainty in land ownership (A research at the Banda Aceh City Land Office)

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Abstract

Article 19 paragraph (1) and paragraph (2) letter c of Law Number 5 of 1960 concerning Basic Agrarian Principles Regulations explains that the purpose of land registration is to fulfil legal certainty regarding the subject of rights, and the existence of this is a strong fibre. Article 34, paragraph (1) of the Minister of Agrarian Affairs and Spatial Planning Regulation of the Head of the National Land Agency Number 21 of 2020 confirms that, in principle, one plot of land can only be issued with one land title certificate. However, in reality, there are certificates issued by BPN for the same land, as well as certificates issued through land registration.

The purpose of this research is to explain the legal consequences of the issuance of double certificates by BPN, the factors that cause the issuance of double certificates for land rights, and the process of resolving problems related to the issuance of double certificates.

This empirical juridical research employs a field approach, utilising interviews and document collection. The data obtained consists of both primary and secondary data, which are described qualitatively.

The research results indicate that the legal consequence of holding a double certificate is that the purpose of land registration is not fulfilled, specifically, ensuring legal certainty and protection for land ownership, which can be detrimental to the holder or owner of the land rights. With the existence of a duplicate certificate, it must be resolved as soon as possible, with the aim of cancelling the second certificate. So the certificate will be null and void by law. The factors that cause double certificates to occur are due to the inaccuracy and inaccuracy of the land office in verifying land data submitted by land registration applicants, administrative errors, changes in land boundaries due to systematic land registration (prona), factors that do not present the parties bordering the land when the land is measured, and deliberate actions carried out by the parties. The case resolution process regarding double certificates will initially be conducted through deliberation at the village level. If no results are obtained, the process will be continued at BPN. However, if you don't achieve peace, the last option is to file a lawsuit at the District Court.

It is recommended that BPN always apply the principle of caution in carrying out the process of making land title certificates, so that the aim of land registration in Indonesia, namely legal certainty, is fulfilled. To prevent duplicate certificates, which would be detrimental to the parties and result in legal uncertainty. It is recommended that BPN always be careful in carrying out their duties and positions, because sometimes there are administrative errors or personal errors when carrying out their duties and positions. It is recommended that people who have been harmed should be given legal protection, either by providing consultation, mediators and other parties. #

Keywords: Issuance of certificates, double land rights, legal uncertainty

Introduction

Law Number 5 of 1960 concerning the Basic Agrarian Principles, commonly referred to as the Basic Agrarian Law (Undang-Undang Pokok Agraria, UUPA), regulates the legal certainty of land ownership rights. Article 19 paragraph (1) of the UUPA stipulates that "In order to guarantee legal certainty, the government shall conduct land registration throughout the territory of the Republic of Indonesia in accordance with provisions regulated by government regulations." The purpose of land registration is to establish a condition in which, after land rights are registered, the government issues a land certificate as valid evidence of ownership for the party concerned. (Harsono, 2008)^[2]

The guarantee of legal certainty for land rights holders largely depends on the system adopted for implementing land registration. In a negative land registration system, the validity of legal acts that transfer rights to the buyer is not determined by the registration itself. Registration does not entitle a person who acquires land from an unauthorised

party to become the new legitimate rights holder. Within the negative publication system, the principle of *nemo plus juris* applies, meaning that one cannot transfer rights beyond what one actually possesses; consequently, the state does not guarantee the accuracy of the information presented. The state does not provide a guarantee regarding either the physical or juridical data. Thus, even after registration has been carried out, the buyer may still be subject to claims from another party who can prove that they are the rightful holder of the land rights. (Parlindungan, 2006)^[5]

The Head of the Land Office, as the official responsible for land registration, must adhere to the principles of prudence and accuracy in issuing land title certificates. Pursuant to Article 34 paragraph (1) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 21 of 2020 concerning the Handling and Settlement of Land Cases, in principle, only one land title certificate may be issued for a single land parcel, unless otherwise stipulated by statutory regulations. However, in practice, instances of

double certificates issued by the National Land Agency (BPN) have occurred. This means that two certificates have been issued for the same parcel of land by the Land Office. There are also cases where a single parcel of land is described in two or more certificates containing different data. Such circumstances may also be referred to as overlapping certificates, where part of the land is covered by more than one certificate. (Chomzah, 2021)^[1]

The issuance of duplicate certificates for a single land parcel creates legal uncertainty. It leads to widespread conflict among parties claiming to be the rightful owners of the same land object. In the field of land measurement, unclear determinations of land area and boundaries may trigger disputes among involved parties, particularly when overlapping ownership occurs between adjacent land rights. Administrative errors at the Land Office, such as mistakes in recording land ownership data, can result in the issuance of two ownership certificates for the same parcel of land. Furthermore, the failure to properly verify property ownership before issuing a new land title certificate may also give rise to overlapping ownership claims. (Umar, 2022)^[8] (Karim, 2023)^[4]

Apart from being an administrative decision, the issuance of duplicate land title certificates may cause harm to parties who lose ownership of the land under their control. Article 1365 of the Indonesian Civil Code stipulates that "every unlawful act that causes harm to another person obliges the party who, due to their fault, has caused such harm to compensate for the loss." Losses arising from unlawful acts (*schade*) may take the form of material assets as well as non-material damages. In civil law, an unlawful act is referred to as *onrechtmatige daad*. The annulment of a certificate by the Head of the Land Office as a consequence of the issuance of duplicate land title certificates creates legal uncertainty over land ownership. It runs counter to the objectives of land registration. (Sutedi, 2023)^[6]

In Decision Number 25/Pdt.G/2023/PN.Bna, a case concerning the issuance of duplicate land certificates arose, with the following arguments presented:

The Plaintiff is the owner of a parcel of land measuring 1,330 m² (one thousand three hundred and thirty square meters) located in Banda Aceh City, based on a deed of grant Number 17/III-MR/1983 issued by the Land Deed Official (PPAT). The Plaintiff has possessed and controlled the land since 1983.

Subsequently, in 1991, the Plaintiff and her late husband moved to North Sumatra. In early December 2004, before the tsunami in Aceh, the Plaintiff and her family returned to Aceh. On the following day after they arrived in Banda Aceh, the village head of Gampong Pie visited the Defendant to hand over the *Prona* land certificate, Number 60 of 1998, in the name of Ruzunar Puteh (the Plaintiff's husband). Upon examination, it was found that the land area stated in the certificate differed from that stated in the 1983 deed of grant.

After examining the certificate, the Plaintiff's husband returned to meet with the village head of Gampong Pie to raise objections regarding the certificate. He requested several days to retrieve the deed of grant that had been left in Medan. However, due to the occurrence of the tsunami, the Plaintiff did not return to Aceh thereafter.

Regarding the *Prona* certificate issued by the National Land Agency (hereinafter referred to as BPN), the Plaintiff had no prior knowledge of the program. In 2011, the Plaintiff

returned to Aceh and, through residents, learned about the distribution of free land certificates in the Kapal Apong Complex, Punge Village, in which the Plaintiff was also present. The Plaintiff received a second certificate for the disputed object, namely Certificate Number 10066 of 2006 in the name of the late Ruzunar; however, the stated land area was inconsistent. Subsequently, the Plaintiff presented her deed of grant to the village head (*Geuchik*) of the village, but it was deemed no longer valid by the *Geuchik*.

Eventually, the Plaintiff went to the BPN Office of Banda Aceh City to file an objection concerning the land measurement and the duplicate certificates related to the disputed object. Through this process, the Plaintiff discovered that her land had been encroached upon by the Defendant, and a portion of it had been marked with an identification number. In this matter, BPN first issued the *Prona* certificate in 1998, and subsequently carried out subdivision and reissuance of the certificate originally in the name of Defendant I to Defendant IV, following a land sale transaction that took place while the dispute was ongoing. Based on the foregoing background, a legal problem arose as a result of the issuance of duplicate certificates for the same parcel of land.

Materials and Methods

Based on this research, the method employed is an empirical juridical legal research method, also referred to as field research, which examines both the applicable legal provisions and the actual circumstances that occur within society. Empirical juridical research is a study of law concerning the application or implementation of normative legal provisions *in action* in specific legal events taking place in society. In this research, the approach applied in empirical legal studies is the juridical analysis approach, which involves observing, accepting, and understanding law as an integral part of human life. Law is not perceived as something abstract, but rather as reflected in the behaviour of individuals or communities (social behaviour). The examination of such social behaviour within society is focused solely on verifying empirical data and the validity of the applicable law. (Ibrahim, 2018)^[3]

Results and Discussion

Legal certainty, as one of the objectives of law, may be regarded as an effort to realise justice. A tangible manifestation of legal certainty lies in the implementation and enforcement of the law against an act, regardless of who commits it, thereby ensuring that every individual can anticipate the legal consequences of their actions. Certainty is essential for the realisation of justice. It is also an inseparable characteristic of law, particularly with respect to written legal norms. Law without the value of certainty loses its meaning, as it can no longer serve as a guideline for individual conduct.

Legal certainty is understood as a condition in which the law attains definitiveness due to the presence of concrete legal force. The principle of legal certainty serves as a form of protection for justiciables (those seeking justice) against arbitrary actions, meaning that an individual will be able to obtain what they are rightfully entitled to expect under certain circumstances.

The term land dispute, or dispute over land rights, refers to the emergence of a legal conflict arising from a complaint filed by a party (either an individual or a legal entity)

containing objections and claims regarding land rights whether concerning the status of the land, its priority, or ownership with the expectation of obtaining an administrative resolution in accordance with the prevailing legal provisions.

Duplicate certificates may arise due to weaknesses in the land registration system, resulting in legal uncertainty for land rights holders in Indonesia. This issue demonstrates that the national land administration system remains weak in providing public services, particularly with regard to the registration of land rights.

In the case that occurred in Gampong Pie, the land was initially acquired through a grant from the parents of the Plaintiff's late husband. However, after the Plaintiff and her late husband moved from Banda Aceh to the city of Medan, they later returned to Aceh shortly before the tsunami. At that time, the village head unexpectedly issued a *Prona* certificate, namely Certificate Number 60 of 1998, in the name of Ruzunar Puteh. Upon examination, it was found that the land area stated in the certificate had been reduced. On the following day, the Plaintiff and her late husband questioned why the size indicated in the deed of grant differed from that in the *Prona* certificate issued in 1998. Since the deed of grant had not been brought with them, the Plaintiff and her husband returned to Medan. Due to the tsunami, they were ultimately unable to return to Banda Aceh. In 2011, Certificate Number 10065 of 2006 in the name of the late Ruzunar was redistributed through the *Prona* program by the village head (*Geuchik*). However, upon further review, it was discovered that the land area stated in the certificate had been further reduced, amounting to only 420 m² (four hundred and twenty square meters), whereas the deed of grant recorded a total area of 1,330 m² (one thousand three hundred and thirty square meters).

At that time, the Plaintiff presented the deed of grant to the village head; however, the village head stated that the deed was no longer valid. The Plaintiff later discovered that the Defendant had encroached upon the disputed land, thereby possessing two certificates, namely, the deed of grant and, additionally, a certificate that had subsequently been sold by the Defendant to Defendant IV in 2005. The actions of the Defendant constitute an unlawful act. Such unlawful acts are regulated under Article 1365 of the Indonesian Civil Code, which stipulates that an unlawful act is defined as an action that causes harm to another person and obliges the responsible party to compensate for the resulting loss.

An unlawful act does not only consist of actions contrary to statutory law, but also includes acts or omissions that infringe upon the rights of others, violate morality, or disregard prudence, propriety, and decency in social relations. An unlawful act may also be understood as a set of legal principles aimed at controlling or regulating harmful behaviour, imposing responsibility for losses arising from social interactions, and providing compensation to victims through appropriate legal claims.

Legal consequences or legal effects are the impacts of an act governed by law. A legal consequence is the effect imposed by law on a legal event or an action taken by a legal subject. According to Jazim Hamidi, the term "legal impact" or "legal consequence" refers to an effect that is direct, substantial, or explicit. Legal consequences arise from actions undertaken in order to obtain a desired outcome by the legal actor. The consequence in question is that which is regulated by law, while the action taken constitutes a legal

act, namely an act carried out in accordance with the applicable law.

According to Mrs Annisa Sitawati, Judge of the Banda Aceh District Court, legal consequences are the outcomes that arise from a legal event. The existence of duplicate land certificates constitutes a legal event, thereby giving rise to legal consequences stemming from such an occurrence. The emergence of losses resulting from the issuance of two certificates over the same parcel of land creates harm, which once again brings into focus the issues of legal certainty and legal protection.

The legal consequence of the existence of duplicate land certificates is the failure to fulfil the objectives of land registration, namely, the assurance of legal certainty and legal protection over land ownership. This situation results in harm to the holder or owner of the land rights. The existence of duplicate certificates must therefore be resolved promptly, with the aim of annulling the second certificate. Consequently, such a certificate shall be deemed null and void by *operation of law*.

In the process of land registration, the occurrence of duplicate certificates is highly possible. Based on the research conducted, the following are the factors that contribute to the issuance of duplicate certificates:

- a. The lack of accuracy and thoroughness of the Land Office in verifying land data submitted by applicants for land registration.
- b. Changes in land boundaries as a result of systematic land registration programs (PRONA).
- c. The absence of neighbouring landowners during the land measurement process.
- d. Administrative errors.

The presence of deliberate acts carried out with intent.

Land registration aims to provide legal certainty for landowners in Indonesia, particularly for those whose land has not yet been registered or is still held under old rights. Therefore, in its implementation, it must be carried out with great caution to avoid errors or negligence that may hinder the realisation of legal certainty. Such negligence may arise either from the community or from the government authorities responsible for implementing the Complete Systematic Land Registration (PTSL), in this case, the National Land Agency (BPN) through the District or City Land Office where the PTSL is conducted. Hence, it is essential that both the community and the government play an active role in jointly supervising the implementation of land registration to ensure it proceeds properly and correctly.

When conducting Complete Systematic Land Registration (PTSL), the principle of prudence must be applied. This is crucial to prevent potential land disputes that may arise in the future, particularly with regard to the issuance of duplicate land certificates. The implementation of this principle must be carried out by all parties, both the government and the community, to ensure that land registration is conducted transparently. In doing so, legal certainty can be guaranteed for landowners.

The resolution of land disputes is a crucial issue that cannot be overlooked and must be carried out in accordance with applicable regulations. Although regulations have been carefully established, land disputes continue to occur frequently. Nevertheless, many land-related issues still arise within the National Land Agency (BPN), particularly

concerning ownership disputes triggered by the issuance of land certificates. In this context, questions of legality and ownership evidence emerge in the form of land title certificates. Such certificates grant the holder full ownership rights over a specific plot of land, with the area and location clearly stated in the document.

The National Land Agency (BPN) has the authority to conduct negotiations, mediation, and to facilitate the handling of disputing parties, as well as to initiate agreements between them. In order to minimise land disputes, particularly those caused by duplicate certificates, BPN also has specific mechanisms for addressing and resolving land dispute cases, including those arising from the issuance of duplicate certificates, namely:

1. Land disputes are often identified by BPN through complaints.
2. Complaints are then followed up by identifying the issues, ensuring whether the matter falls within BPN's authority or beyond its jurisdiction.
3. If the matter is within BPN's authority, BPN conducts a review of the issue to verify the validity of the complaint and to determine whether it can be further processed.
4. If the matter is of strategic significance, a special working unit is required. In cases involving political, social, or economic aspects, the team may involve institutions such as the House of Representatives (DPR) or Regional House of Representatives (DPRD), the Ministry of Home Affairs, or the relevant local government.
5. The team prepares a research report to serve as a basis for recommendations in resolving the issue.

In cases of disputes involving duplicate land certificates, the National Land Agency (BPN) holds the authority to conduct negotiation, mediation, and facilitation between the disputing parties, while also playing a role in encouraging the attainment of a settlement. Regional offices of BPN at the provincial and district/city levels only possess the authority to issue decisions in the context of dispute resolution, whereas the implementation of administrative follow-up in land affairs remains under the authority of the central BPN.

In practice, the resolution of land disputes is not only carried out by the National Land Agency (BPN) but may also be pursued through the General Courts and the Administrative Courts. The General Courts primarily focus on civil and criminal aspects of land disputes, whereas the Administrative Courts handle disputes related to administrative decisions issued by the BPN or other local officials concerning land matters.

According to Judge Annisa Sitawati of the Banda Aceh District Court, the local National Land Agency (BPN) must be held responsible for the issuance of duplicate land certificates arising from cases of land encroachment. This is because the agency plays a central role in the implementation of land registration through the *prona* or systematic land registration program.

Based on the prevailing legal provisions in Indonesia, the resolution of land disputes concerning land ownership is generally carried out through the General Court. Meanwhile, if the dispute relates to a decision issued by the National Land Agency (BPN), the matter must be submitted to the Administrative Court (*Peradilan Tata Usaha Negara* or

PTUN). Disputes involving *waqf* land, however, fall under the jurisdiction of the Religious Court.

From the description of the characteristics of dispute resolution institutions, both through litigation and non-litigation channels, it can be concluded that, to date, no mechanism has been able to comprehensively and swiftly resolve land disputes. On the contrary, the resolution process often takes a prolonged period and tends to become protracted. In reality, the mediation process conducted by the National Land Agency (BPN) has not been effective in addressing the various land disputes currently occurring. This condition constitutes one of the major obstacles for BPN in realising its vision, mission, and strategic programs. If reconciliation cannot be achieved at the National Land Agency (BPN), the final option is to file a lawsuit with the District Court. However, pursuing legal action often requires considerable time and litigation costs. The process of resolving disputes concerning duplicate land certificates is initially carried out through deliberation at the village level. If no agreement is reached, the matter proceeds to the BPN. Should reconciliation again prove unattainable, the final option is to file a lawsuit with the District Court.

Suggestion

It is recommended that the National Land Agency (BPN) consistently apply the principle of prudence in carrying out the process of issuing land certificates, in order to ensure the fulfilment of the primary objective of land registration in Indonesia, namely legal certainty. By doing so, the occurrence of duplicate certificates, which often cause significant losses to the parties involved and lead to legal uncertainty, can be avoided. It is also advised that BPN exercise greater caution in performing its duties and responsibilities, as administrative errors or *errors in person* may occasionally occur during the execution of its functions. Furthermore, it is recommended that individuals who suffer losses be provided with legal protection, including access to consultation, mediation, and other relevant support mechanisms.

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