

## **Case Study of Administrative High Court Decision for Legal Protection for Land Right Holders In The Event Of Multiple Certificates**

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### **Abstract:**

The phenomenon that exists in Indonesia Regarding the "double certificate" case, causing a civil dispute between the parties, to prove the guarantee of legal certainty over the land is resolved through the judiciary. The formulation of the research problem is based on what factors led to the issuance of dual certificates of land rights? and how is the legal protection for the holders of land rights? The research on this case is an empirical juridical law research with descriptive analysis method. Sources of research data come from interviews and documentation as well as literature study data. Data collection techniques using interviews and documentation. The research results that have been collected are then analyzed qualitatively. The results of this study are that the existence of multiple certificates is caused by (a) factors from the land office in the form of being not careful and not careful in conducting an investigation of the history of land parcels and mapping the boundaries of land ownership in the context of issuing the certificate of disputed objects and the Land Office does not conduct research or see image of the map of the land registration owned. (b) Factors from the Owner/Holder of Land Rights, namely the land owners do not provide boundaries for the parcels of land they control as regulated in **PP RI No. 24 of 1997** Article 17 paragraph (3), giving rise to cases of overlapping land tenure/double certificates. (2) Legal protection for rights holders as stipulated in Government Regulation Number 24 of 1997, and Article 19 paragraph (2) letter c, 23 paragraph (2), Article 32 paragraph (2) and Article 38 paragraph (2) UUPA, that the letters of proof of rights apply as a strong means of proof. Second, the holders of land rights that are the object of dispute do not get legal protection after the decision to revoke the land certificate because it adheres to a publication system in land registration, namely a negative (not absolute) publication system that contains positive elements. Suggestions for this research are Land Office officials should be more thorough, careful and thorough, especially when measuring and mapping.

**Key Word: Legal Protection, Land Rights and Dual Certificates.**

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### **I. Introduction**

The Basic Agrarian Law (UUPA) is another name for Law Number 5 of 1960 concerning Basic Agrarian Regulations. This law was passed and promulgated on September 24, 1960 in Jakarta. The purpose of the issuance of the UUPA was to end the dualism of agrarian law in Indonesia at that time. In the period of more than a decade since the proclamation, the majority of Indonesian people still apply agrarian law based on colonial law and a few others based on customary law. Agrarian law based on western law clearly had the goals and principles of the colonial government.

It can be ascertained that the implementation of the agraria law will clearly not be able to realize the ideals of the State as stated in the 1945 Constitution Article 33 paragraph (3), namely the Earth, water and space and the natural resources contained therein are controlled by the State and used for the greatest benefit of the people. With the birth of the UUPA, a national agrarian law will be realized, which will provide legal certainty for all people and enable the achievement of the functions of earth, water and space as well as natural resources as aspired to. The main objectives of the enactment of the LoGA are to lay the foundations for the preparation of a national agrarian law which will be a tool to bring prosperity, happiness and justice to the state and people, especially the peasants, in the context of realizing a just and prosperous society, laying the foundations for the basis for unity and simplicity in land law, as well as laying the foundations for providing legal certainty regarding land rights for all people. Legal certainty for land rights owners, as stated by the LoGA itself, can only be obtained through the land registration procedure (which some people call the "land certificate" process). Land is something that has a very important value in people's lives, because land is synonymous with community survival. Not only land for living, but also can be a place of community livelihood. Land rights are rights to control a plot of land which can be granted to individuals, groups of people, or legal entities. There are various types of land rights, such as property

rights, cultivation rights, building rights, use rights, and so on. 2) the 1945 Constitution. Land has economic value, because land is an element that cannot be ruled out in the era of national development or to support economic growth. Besides having economic value, land also has social value, which means that land rights are not absolute, but the state guarantees and respects land rights granted to its citizens, so that legal certainty is needed in land tenure protected by law. The regulation of civil law regarding objects/assets has been stated in several laws, for example Law Number 5 of 1960 concerning Agrarian Principles (UUPA), Law Number 37 of 2004 concerning Bankruptcy, and so on. (Soetami, 2008: 10) Land is the object that is most easily affected by disputes, whether disputes between individuals, individual disputes with legal entities, disputes between legal entities, and even disputes involving the government, so that legal arrangements related to the control/granting of land rights must be able to be maximized to ensure the protection of land rights holders. Land issues require special attention and handling from various parties, because the current development is expanding in various fields, so there must be a guarantee of certainty over land rights. To avoid disputes between individuals who need the land, land regulations are made that are useful for regulating all land use activities in Indonesia, namely Regulation Number 5 of 1960 (State Gazette 1960 Number 104) which has determined that land throughout Indonesia must be inventoried. Provisions regarding legal certainty of land rights are regulated in Government Regulation Number 10 of 1961 concerning Land Registration. Then according to the dynamics in its development, the Government Regulation is enhanced by Government Regulation Number 24 of 1997 concerning Land Registration. simplification of requirements and procedures for the implementation of land registration. The purpose of this study is to analyze the factors that led to the issuance of dual certificates of land rights by the Land Office and to analyze the legal protection of the holders of land rights in the event of the issuance of double certificates.

## **II. Material And Methods**

In law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles is a law that contains basic agrarian principles in the agrarian sector which is the basis for efforts to reform agrarian law in order to be expected to provide legal guarantees for the community in utilizing the functions of the earth, water and space as well as the natural wealth contained therein for the common welfare of the community in a fair manner. To achieve prosperity where the community can safely carry out the rights and obligations they have obtained in accordance with regulations that have guaranteed protection of these rights and obligations (Effendie, 2008:15). The legal basis for land registration is stated in Article 19 of the Basic Agrarian Law (UUPA). The essence of these provisions stipulates that the government is obliged to regulate and organize *rechtskadastral* land registrations throughout the territory of Indonesia, whose implementation is regulated by Government Regulation. To implement Article 19 paragraph (1) of the Basic Agrarian Law, the Government issued Government Regulation Number 10 of 1961 which was later refined by Government Regulation Number 24 of 1997 concerning Land Registration. In accordance with the purpose of land registration which is to provide legal certainty, the government is also required for the right holder concerned to register every time there is a transfer, abolition and imposition of land rights as regulated in Article 21 paragraph (2), Article 32 paragraph and Article 38 paragraph (2) of the Basic Agrarian Law. Article 19 paragraph 1 of the LoGA has determined that to ensure legal certainty by the government, land registration is carried out throughout the territory of the Republic of Indonesia according to the provisions stipulated by Government Regulation (Effendie, 2008: 13).

Land registration is a series of activities carried out by the government continuously, continuously and regularly, including the collection, processing, bookkeeping, and presentation and maintenance of physical data and juridical data, in the form of maps and lists, regarding land parcels and housing units. flats, including the provision of proof of ownership only for parcels of land that already have rights, and ownership rights to flat units and certain rights. the purpose of holding land registration has essentially been stipulated in the Law of the Republic of Indonesia no. 5 of 1960, Article 19 paragraph (1) that land registration is a government task that is carried out in order to guarantee legal certainty in the land sector (*rechts cadaster* or legal cadaster). In addition to *rechtskadaster*, land registration is also known for the purpose of determining the classification and amount of tax (*fiscal cadaster*).

In the deed registration system, the deeds are registered by the land registration official. Land registration officials are passive. They did not test the validity of the data mentioned in the registered deed. Every time there is a change, a deed must be made as proof. So in this system, the required juridical data must be found in the relevant deeds. Legal defects in a deed can result in the invalidity of a legal act as evidenced by a deed made later. To obtain juridical data must be done with the so-called "title search", which can be time consuming and costly, because for the title search expert assistance is required. Because of these difficulties, Robert Richard Torrens created a new system that is simpler and allows people to obtain information in an easy way, without having to do a title search on existing deeds. This registration system was called the "registration of titles", which became known as the Torrens system. Legal actions that cause changes later, must also be proven by a deed. However, in the implementation of the registration, it is not the deed that is registered but the rights created and the changes that occur, a list of entries is provided which is called the register or land book. The deed of granting rights serves as a

source of juridical data to register the rights granted in the land book. Likewise, the deed of transfer and assignment of rights serves as a data source for registering changes to their rights in the land book and recording changes, then by the land registration official testing the correctness of the data contained in the deed in question, so he must be active. As proof of rights, a certificate is issued, which is a copy of the register, which consists of a copy of the land book and a measuring document bound together in the cover of the document. In this system, the land book is kept at the office of the land registration officer and is open to the public. Therefore, people can trust the truth of the data presented, depending on the publication system used in the administration of land registration by the state land concerned.

The positive publication system always uses a rights registration system. So there must be a register or land book as a form of storing and presenting juridical data and a certificate of rights as a form of storing and presenting juridical data and a certificate of rights as proof of rights. It is the registration or recording of a person's name in the register as a right holder that makes a person the holder of the right to the land in question, not a legal act of transferring rights (Title by registration, the register is everything). This statement is the philosophical basis that underlies the Torrens system, where by using this positive publication system the state guarantees the truth of the data presented. People can fully trust the data presented in the register. The person who will buy the land or the creditor who will receive the land as collateral for the credit to be given need not hesitate to enter into legal action with the party whose name is registered in the register as the right holder. In a negative publicity system, it is not registration but the legality of the legal action that determines the transfer of rights to the buyer. The registration of rights does not make the person who acquires land from an unauthorized party the new right holder. This system applies a principle known as *nemo plus juris*, which is a principle which states that people cannot surrender or transfer rights beyond what they themselves have. Therefore, the data presented in a registration with a negative publication system cannot be trusted to be true. The state does not guarantee the truth of the data presented because the certificate is a strong evidence, which means that it is still possible to change if something goes wrong. Even if you have registered, the buyer is always still face the possibility of a lawsuit from a person who can prove that he is the real right holder.

The publication system adopted by the Basic Agrarian Law and Government Regulation Number 24 of 1997 is a negative publication system that contains positive elements. is not a pure negative, because it is stated in Article 19 paragraph (2) letter c, that registration produces letters of proof of rights, which serve as strong evidence and in Articles 23, 32 and 38 of the Basic Agrarian Law it is stated that the registration of various Legal events are strong evidence. In addition, from the provisions regarding the procedures for collecting, processing, storing and presenting physical data and juridical data as well as the issuance of certificates in this government regulation, it is clear that efforts are made to obtain and present correct data as far as possible, because land registration is to ensure legal certainty. This means that as long as it cannot be proven otherwise, the data presented in the land book and registration map must be accepted as correct data, as well as those contained in the certificate of rights. So the data is strong evidence (Harsono, 2008: 80-83).

Land registration activities for the first time include (1) collection and processing of physical data, proof of rights and bookkeeping, (3) issuance of certificates, (4) presentation of physical data and juridical data and (4) storage of general lists and documents. Systematic land registration is a land registration activity for the first time that is carried out simultaneously which includes all objects of registration that have not been registered in the territory or part of the territory of a village. Systematic registration is carried out on the initiative of the government based on a long-term and annual work plan and is carried out in areas determined by the State Minister of Agrarian Affairs/Head of the National Land Agency (Adrian, 2009: 136). Meanwhile, sporadic registration is the activity of registering land for the first time regarding one or several objects of land registration within the territory or part of the territory of a village, individually or en masse. Sporadic registration is carried out at the request of interested parties. According to Boedi Harsono in his book *Indonesian Agrarian Law*, a certificate of land rights consists of a copy of the land book and a measuring document which is bound together in the cover of the document (Harsono, 2008: 78). In connection with the foregoing, it can be seen that the certificate is a letter of proof of strong rights regarding physical data and juridical data contained in it, so that the physical data and juridical data are in accordance with the data contained in the letter of measurement and the relevant land book.

A certificate as a strong evidence means that as long as it cannot be proven otherwise, the physical data and juridical data contained therein must be accepted as correct data, as can also be proven from the data listed in the land book and the letter of measurement. The word "strong" in relation to the negative system means "not absolute" which means that the land certificate may still be aborted as long as there is evidence to the contrary stating the invalidity of the land certificate. Thus, land certificates are not the only proof of ownership of land rights and therefore there is still other evidence about land rights holders, including proof of sale and purchase of customary land or certificate of customary property rights (Effendie, 2008: 77)

### **III. RESEARCH DESIGN AND METHODS**

The type of research used in this research is Juridical Empirical research, or what is called field research, namely examining the applicable legal provisions and what is happening in reality in society. Empirical juridical research is legal research regarding the enforcement or implementation of normative legal provisions in action on certain legal events that occur in society. The author chooses this type of empirical juridical research because this research relates and starts from aspects of positive law or current law, in the form of statutory provisions and other provisions which are then linked to practices that occur in the field. The location of this research is the State Administrative Court of Surabaya, East Java. Sources of data used in this study were taken from primary data and secondary data in the form of primary data is data obtained directly from the first source related to the problems to be discussed, in this case the data obtained from the results of field research directly by interviewing the the Surabaya State Administrative Court, East Java, while secondary data are data obtained from books as complementary data for primary data sources. The secondary data sources of this research are data obtained by conducting a literature review such as scientific books, research results and so on. In this data collection method, researchers get accurate and authentic data because it is done by collecting primary and secondary data sources, which are adapted to the research approach.

The primary and secondary data collection techniques used were direct interviews. Direct interview is a face-to-face person-to-person role situation, when the interviewer asks the respondent several questions designed to obtain answers that are relevant to the research problem. Direct interviews in collecting social facts as material for empirical science studies, are carried out by direct question and answer where questions are arranged in a systematic, clear and directed manner in accordance with the legal issues raised in the research. This interview is intended to obtain true and accurate information from the specified sources. In the interview, all information obtained regarding what is desired is recorded or recorded. Interviews were conducted to obtain information orally in order to achieve the goal of accurate information from competent sources. The data management was traced and obtained through direct interviews with the Division of the State Administrative Court of Surabaya, East Java, namely Mr. Suher Didianto. Observation That is direct observation at the research location, namely at the State Administrative Court of Surabaya, East Java.

Documentation Studies Documentation techniques are data collection techniques in the form of written or image data sources. Written or image sources in the form of official documents, archives, books, magazines, personal documents, and photos related to research problems. Conducted to obtain and understand concepts and theories as well as provisions regarding the implementation of the agreement for the procurement of goods and services in the review of Law No. 5 of 1960 concerning Agrarian Principles and Government Regulation No. 24 of 1997 concerning Land Registration. After the data is collected, it is then processed using the following stages:

Data checking, namely correcting whether the data collected is complete enough, correct and appropriate/relevant to the problem. Data marking, namely giving notes or marks stating the type of data source and the order of the formulation of the problem. Data reconstruction, which is rearranging data in an orderly, logical sequence so that it is easy to understand and interpret. Systematic data, namely placing data according to a systematic framework of discussion based on the sequence of problems. The data analysis method used in this study used qualitative analysis. Qualitative data analysis is an effort made by working with data, organizing data, and sorting it into manageable units, synthesizing it, looking for and finding patterns, finding what can be told to others. Data analysis is carried out by means of legal interpretation of the data, then the data is described in the form of sentences arranged in a systematic, complete and detailed manner according to a predetermined discussion framework, making it easier to give meaning to the data in accordance with the research objectives and finally a conclusion can be drawn.

#### **IV. CASE AND DISCUSSION**

In practice, the settlement of land disputes is not only carried out by the National Land Agency but can also be resolved by the General Courts and State Administrative Courts. If the General Court focuses more on civil and criminal matters in land disputes, it is different with the State Administrative Court which resolves land disputes related to decrees issued by the National Land Agency or other regional officials related to land. At this time, most land disputes in this case dual certificates can be resolved directly by the parties through deliberation conducted outside the court with or without a mediator, where the mediator is usually from parties who have influence, for example the village head/lurah, customary leader and of course the Land Agency. National. Furthermore, dispute resolution through the judiciary, for example the dispute over dual certificates, namely through the State Administrative Court. According to Muhammad Iqbal SH, the judge of the Surabaya State Administrative Court from the interview, he said "The process of resolving a dual certificate dispute is the same as the process of resolving other claims, when it comes to procedural law, the procedural law first examines readiness and then enters the usual event, so if for example the examination is still in the administrative stage, register the lawsuit first, pay the down-payment fee, then go to the clerk, the clerk enters the chairman, the chairman determines the panel of judges, then after the determination of the panel of judges the file is brought to the panel of judges to determine the trial day. If it has entered the panel of judges, the panel of judges will determine when

the preparatory examination will be. The preparatory examination was carried out for 30 days, during which time the plaintiffs were given the opportunity to correct their claims. The correction of this lawsuit is carried out so that the subject and object of the lawsuit are clear.

After the preparatory examination, it is entered into a trial open to the public, the lawsuit, answers, replicas, duplicates, evidence including witnesses, the next conclusion is the judge's decision. on May 31, 2005 with the subject on behalf of Satria Kamal Gautama Purwanagara as the plaintiff and the Head of the Surabaya City Land Office and Dra. Hj. Rukiah, AR.MM as the defendant. As for the object of the dispute in the form of certificates in the name of the heirs of Baso Gallarang Bin Bundai as the original owner of the land before it was sold to the Plaintiff. According to Andi Hasanuddin, SH.MH. The Junior Registrar of Hakum of the Surabaya State Administrative Court in an interview said "The object of the dual certificate dispute is the certificate and not the land because the name of the administration does not look at the land or anything but looks at the legal status of the land, which is seen by the decision, the existence of a letter that the land is his, as evidenced by the existence of a certificate.

So in the administrative dispute that was resolved at the State Administrative Court, it was indeed land but not the object land but the legal status of the land, namely the certificate of ownership." and in order to make it easier for the plaintiff in the examination process, do not let the plaintiff's lawsuit escape or the object of error in the trial process, because that is why a preparatory examination is carried out so that it is clear. After the preparatory examination, the next step is to enter an open event but before that the plaintiff and the defendant are given the opportunity to make peace. At the next trial, the submission of the Defendant's answer can be in the form of an acknowledgment, rebuttal, a rebuttal in which the Defendant does not deny but also does not justify the contents of the lawsuit and sometimes the Defendant can reverse his answer in the form of a counterclaim. Plaintiff (response to the Defendant's answer). At the next trial, the Plaintiff's Replic was submitted which essentially rejected all of the Defendant's exceptions and asked the Panel of Judges to reject the Defendant's exception and accept the Plaintiff's Lawsuit. The same opportunity is given to the Defendant in writing to respond to the Plaintiff's Replic which is called the Defendant's Duplication (response to the Plaintiff's Reply). The Defendant's duplicate actually has to maintain that the arguments in the Defendant's answer are true. while the arguments in the Plaintiff's Replic are false. In the next trial, it was the submission of the Defendant's Duplicate, namely the response to the Plaintiff's Replic. In this case, the Replic and the duplicates of the parties essentially maintained their opinion as stated in the lawsuit and the original answer. After the Duplication, the Panel of Judges will continue to submit the evidence of the Plaintiff and the Defendant to the Panel of Judges. According to Mr. Esau Ngepak SH.MH, the judge of the Surabaya State Administrative Court in an interview said "In the proceedings in court, one of the duties of the judge is to establish the actual legal relationship. between the litigants. This relationship must be proven true before the court.

Where in this case what must be proven are all events and rights put forward by one party whose truth is denied by the other party. The Plaintiff is given the opportunity to prove the truth of the argument of his claim. After that, the defendant is given the opportunity to prove the truth of his refutation argument and to prove all of this evidence is needed and each evidence in the form of letters or writings has its own strength of proof and the judge will determine the weight or value of the evidence. In this case, to strengthen the argument of his claim, the Plaintiff submitted documentary evidence in the form of a photocopy where the evidence had been given sufficient stamp duty and had been matched with the original in court, it turned out to be appropriate so that it could be used as valid evidence. In addition to submitting documentary evidence, the Plaintiff also submitted 7 (seven) witnesses in court to support the evidence, namely H. Abdul Salam Gani, Haji Abbas Gani, Muh. Arif Gani, Sitti Rabiah, Syamsul Bahri, DG. Sikki and IR. Abdul Rahman; where the Panel of Judges provides an opportunity and examines witnesses to be asked for their statements. Meanwhile, to strengthen the arguments of the Defendant, in this case, the Head of the Surabaya City Land Office, submitted 8 letter evidence in the form of photocopies and had been given sufficient stamps and had been matched with the originals, so that they could be used as legal evidence.

The Intervention Defendant, namely Dra. Hj. Rukiah, AR.MM submitted evidence in the form of 7 photocopies of which the evidence had been given sufficient stamp duty and had been matched with the original in court, which turned out to be appropriate so that it could be used as legal evidence. After that, the Defendant was also given the opportunity to present witnesses to be asked for their statements, but the Defendants and Intervention Defendants did not present witnesses in court. And at the time of local inspection at the location of the land referred to in the object of the a quo dispute, legal facts were obtained that both the Plaintiffs and the Defendants indicated the same land location as referred to in the object of the a quo dispute. Therefore, it can be said that proof is to provide sufficient grounds for judges in examining a dispute in order to provide certainty about the truth of the events proposed, that is why proof in procedural law (trial) is very important. one of the most important aspects in determining the realization of the value of a judge's decision that contains justice and contains legal certainty, besides that it must also contain benefits for the parties concerned so that the judge's considerations must be handled carefully, well and carefully.

## V. CONCLUSION

In the fact, the research have more conclusion as.

- a. Factors from the land office are (1) not being careful and not careful in conducting an investigation of the history of land parcels and mapping the boundaries of land ownership in the context of issuing certificates of objects of dispute; and (2) the Land Office does not conduct research or view images of maps of land registrations owned.
- b. Factors from the Owner/Holder of Land Rights, namely the land owners (Plaintiff I and Plaintiff II) did not provide boundary markers for the land parcels under their control as regulated in PP RI No. 24 of 1997 Article 17 paragraph (3), giving rise to cases of overlapping land tenure/double certificates.
- c. Legal protection for land rights holders when there is a double certificate issuance. The rights holders, namely the plaintiffs, get legal protection as stipulated in Government Regulation Number 24 of 1997, and Article 19 paragraph (2) letter c, Article 23 paragraph (2), Article 32 paragraph (2) and Article 38 paragraph (2) of the UUPA, that The certificates of title are valid as a strong evidence. Holders of land rights who are the object of dispute do not get legal protection after the decision to revoke the land certificate because it adheres to a publication system in land registration, namely a negative (not absolute) publication system containing positive element.

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