

JURIDICAL ANALYSIS OF MULTIPLE LAND OWNERSHIP DISPUTES IN INDONESIA

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ABSTRAK

Studi ini mengulas peraturan hukum tentang sertifikat tanah dan penyelesaian sertifikat ganda. Metode penelitian yang digunakan adalah analisis hukum dengan fokus pada hukum agraria Indonesia. Tantangan utama termasuk kurangnya pemahaman masyarakat terhadap aturan pendaftaran dan kelemahan regulasi, yang memicu sengketa kompleks. Solusi termasuk pemantauan peta pendaftaran tanah dan proses balik nama sertifikat. Penyelesaian sengketa dapat melalui musyawarah, arbitrase, atau pengadilan. Upaya lebih lanjut dari BPN diperlukan untuk memastikan keabsahan data pertanahan guna penyelesaian sengketa yang adil dan efektif.

Kata Kunci: Pengaturan Hukum, Sertifikat tanah, Ganda, Kepemilikan tanah

Abstract

This study reviews the legal regulations on land certificates and the resolution of multiple certificates. The research method used is legal analysis with a focus on Indonesian agrarian law. Key challenges include a lack of public understanding of registration rules and regulatory weaknesses, which trigger complex disputes. Solutions include the monitoring of land registration maps and the process of certificate transfer. Dispute resolution can be through deliberation, arbitration, or court. Further efforts from BPN are needed to ensure the validity of land data for fair and effective dispute resolution.

Keywords : *Legal Arrangements, Certificate of Land Tenure, Multiple, Land Ownership*

A. Introduction

Since long ago, land can be said to have a close relationship with human prosperity, land is an essential thing, and land can be used in various fields or sectors, therefore it is not uncommon for a person's desire to own as much land as possible to arise by using a variety of ways, this is what can cause land problems in society. with the continuous problems regarding land ownership that will continue to occur, the government takes action by compiling a written regulation governing agrarian affairs, such as promulgating Law No. 5 of 1960 concerning basic basic agrarian regulations, (UUPA). UUPA regulates land rights, land management rights and land exploitation rights with the intention of guaranteeing land rights and maintaining the state's interest in the management of natural

resources, namely land, as mentioned in the provisions of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia in Article 1. UUPA also has a positive legal foundation in Indonesia and has principles of land law, here are the principles: The principle of nationality stipulates that the state owns the earth, water, space and other natural resources and must be used for the prosperity of the people, The supreme principle stipulates that the state has the authority and rights over the earth, water, space, and other natural resources. The principle of prioritizing national interests: National interests take precedence over individual or group needs. The state has authority and rights over the earth, water, space and other natural resources. The goal is to use them as much as possible for the prosperity of the people. Social Function Principle: Land is part of the public interest and not just individual property. Therefore, the use of land should be tailored to the interests of the public and the surrounding community rather than to individual interests. The principle that only Indonesian citizens have property rights over land. The principle of equality for every Indonesian citizen, only Indonesian citizens have land rights in Indonesia, while foreigners have no authority over land ownership in Indonesia. The principle of active activities on agricultural land, stipulates that individuals as owners of certificates over a plot of agricultural land have an obligation to actively manage and cultivate their land. Land for agriculture should not be left abandoned or unused. In addition, landowners must prevent prohibitive practices. Land use mandates that its use must be properly planned and managed. Land must be used in accordance with its designation.

Land has long been an integral part of social reality at various levels of life. However, land-related disputes or conflicts are not uncommon. These disputes can involve differences of opinion, disputes, or even disputes between two or more parties, either between communities or between institutions. The root causes of land disputes in Indonesia are divided into several factors, including discrepancies in the past land administration system, discrepancies in the structure of land ownership and control, an unclear land registration publication system, and the emergence of the land mafia, unclear legislative regulations, the existence of abandoned land, lack of concern on the part of notaries and PPAT, lack of awareness of judges of land regulations and the lack of strong commitment of law enforcers. In the context of some recent land conflicts, there are two main factors that trigger conflicts, namely legal factors and non-legal factors. The first factor is the legal factor which involves problems of unclear or gaps in regulations, inadequate regulations, and complex centralized and settlement processes. On the other hand, non-legal factors

include land disparity, stable to high land values, public awareness, population growth in certain areas, and poverty.

In general, tenure over land is a legal agreement that regulates the authority, functions, responsibilities, and/or prohibitions over the recognized land. Discussed in agrarian law, “land ownership/possession rights” are rights that allow the beneficiary to do anything with the land. There are two types of land tenure: physical tenure and legal government tenure. Legal tenure can involve rights safeguarded by law, which allow the right holder to physically control the land in accordance with his/her rights. Control of land rights is the right to use land not owned by a person. This permission is valid for a specific purpose and period of time. Land rights owners can obtain state permission to use land they do not own. Land registration produces a certificate, a letter indicating one's land ownership. As stated in article 32 paragraph (2) number 24 of 1997, a certificate is a proof consisting of a copy of a land book and a measurement letter wrapped in a cover with a garuda image and bound together that shows ownership rights to goods or expertise owned or a certificate is a deed that is deliberately made to prove the existence of a certain event¹. whereas according to article 1 point 20 of Government Regulation No. 24 of 1997, is a letter of evidence of rights as referred to in article 19 paragraph (2) letter c of the UUPA for land rights, management rights, waqf land, ownership rights over apartment units and mortgage rights, each of which has been recorded in the relevant land book². The applicant, adjoining owners, village officials and relevant institutions participate in the certificate-making process. Unfortunately, sometimes irresponsible people commit forgery when issuing the certificate, which makes the certificate legally defective. Nowadays, there are often fake certificates or multiple certificates in the community. As a result, people need to know the truth at the local land office physically and juridically. Usually, there will be new problems with questions about the existence of multiple certificates on overlapping land parcels. The problem formulation in this journal is as follows: Land tenure certificates play a critical role in determining the ownership and level of authority over land. These certificates serve as legal documents that specify the position and level of ownership individuals or entities have over a particular piece of land. The legal regulations surrounding land tenure certificates delineate the precise rights and responsibilities associated with land ownership, providing clarity on matters such as usage rights,

¹ James Julianto Irawan, Surat Berharga Suatu Tinjauan Yuridis dan Praktis, (Jakarta: Prenadamedia Group, 2014), h. 197

² Peraturan Pemerintah No. 24 Tahun 1997, Tentang Pendaftaran Tanah

transferability, and dispute resolution. Consequently, understanding both the position and legal regulations governing land tenure certificates is essential for ensuring proper land management and safeguarding property rights.

B. Method

In the process of writing research in the form of a journal, the author uses a qualitative method of literature, the subject is legislation, treaties, principles, theories and online sources and books. what is meant by qualitative method is a method that focuses on observation, this method can produce in-depth and specific data, this method also has several characteristics, namely it does not require a theory or hypothesis and the main instrument is to collect data.

C. Discussion

UUPA is the result of changes made by the Indonesian government after independence, where the agrarian law that previously belonged to the colonial government was changed to national law, the Basic Agrarian Law (UUPA) is the result of collaboration from various parties which aims to regulate the basis of land tenure and ownership in Indonesia. UUPA covers various aspects related to human resources (SDA). The objectives of the enactment of UUPA are as follows: Forming the basis of national agrarian law, UUPA aims to create fair agrarian law and realize prosperity for the people of Indonesia, upholding Unity and Simplicity in Land Law: UUPA consolidates regulations and ensures that land regulations are easily accessible, UUPA provides legal certainty over land ownership rights for all people by providing a clear legal basis, so that people can feel safe and protected over the land they own, UUPA provides legal certainty over land ownership rights for all people by providing a clear legal basis, so that people can feel safe and protected over the land they own.

1. Position and Level of Land Tenure Certificate

In law, land refers to the surface of the Earth as a whole, while land rights refer to a specific portion of the Earth's surface that measures in length and width. Land is responsible for the economic and political life of society. In Indonesian law, land ownership can be regulated through certificates, which are legal deeds. The certificate serves as birth, formal, and material evidence. According to Article 165 HIR, authentic deeds must be accepted as true, as long as there is no evidence to the contrary. Similarly, according to Article 32 (1) of Government Regulation 24/1997, a certificate is strong evidence. Therefore, all information contained in the certificate, both juridical and

physical, must be considered correct. To obtain an official land certificate, you have to go to the BPN office and bring all the necessary documents, such as photocopies of KTP, Family Card, NPWP, tax notification letter, proof of land title (such as Sale and Purchase Deed, Grant Deed, Letter C), proof of deposit, and BPHTB and pph. After that, you have to fill in the form and verify the documents with the BPN officer, except for low-income people who are exempted from both (the owner must be present during the measurement), next is to arrange for a land certificate from the BPN office and finally wait for the boundary installation process. land. Note that the cost of registering land certificates through PTSL does not include land inspection, counseling, collection of juridical and physical data, validation of physical and juridical data, issuance of title decrees, issuance of certificates, and monitoring and reporting. This provision is made in a Joint Decree (SKB) by three ministers: Minister of ATR/BPN, Minister of Home Affairs, and Minister of Village, Development of Disadvantaged Regions and Transmigration (PDTT).

If an interested party wants to cancel a land certificate, especially due to a court ruling, then a request for cancellation must be made to the Head of BPN. Year after year the cases of land disputes are increasing this is due to the limited availability of land but the number of human population has increased continuously, the existence of inequality in the structure of the company, ownership and abandoned land, pluralism and public awareness of the laws governing land that are still minimal or lacking. the government formed an institution called BPN (national land agency) which has authority in the field of land. the result of the double certificate is that there is no legal certainty over the land, it is said that there is no certainty because there is no status to whom the land belongs. In this case the issue of disputes ownership of two one object with two certificates can be resolved in 3 ways, as follows: direct deliberation, This method involves the disputing parties in direct discussion. However, this method only applies to disputes that do not involve ownership of land rights that can change a person's ownership status. In addition, kinship relations and customary law are still taken into consideration, apply for a land certificate from the BPN office and finally wait for the process of installing land boundaries. Note that the cost of registering a land certificate through PTSL does not include land inspection, counseling, collection of juridical and physical data, validation of physical and juridical data, issuance of SK Hak, issuance of certificates, and supervision and reports, the court issued a Joint Decree (SKB) made by three ministers: Minister of ATR/BPN, Minister of Home Affairs, and Minister of Villages, Disadvantaged Regions and Transmigration (PDTT), disputes over land ownership are resolved in the general courts, while disputes

over land agency decisions are left to the state administrative courts. Often, land agencies or bodies are involved in resolving disputes resulting from multiple certificates, and disputes over land ownership are resolved in the general courts, while disputes over land agency decisions are left to the state administrative courts. Often, land agencies or bodies are involved in resolving disputes resulting from multiple titles, and the process is usually set in stone. Dispute handling usually involves the following steps: Complaint means that the disputing party submits a complaint containing events and evidence showing that the applicant/complainant is entitled to the disputed land. The complaint contains a wish that the mutation of the land can be prevented so as not to harm the applicant, research follows on from receiving the complaint and involves an analysis of the accumulation of administrative data and physical analysis in the field related to land tenure. The results of this analysis will provide a provisional conclusion on the validity of the complaint, whether it is well-founded or not, and whether it needs to be processed further.

The position of a land title certificate relates to its legal status and strength in land tenure. Land rights certificate is one of the authentic evidence issued by the government and/or authorized agency to show ownership of land rights. The position of the certificate can be accepted or rejected based on applicable provisions. The position of the land tenure certificate is seen/explained by looking at the following aspects: Local Government Authority, the 1945 Constitution of the Republic of Indonesia (UUD 1945) and Law No. 5 of 1960 on Basic Agrarian Principles (UUPA), stipulates that as an administrator, the government is responsible for land affairs and has the authority to resolve land disputes, land Registration Map, there may be multiple land certificates because the certificates are not listed in the registration map of a particular area or region, expiration, land rights without a certificate may be lost. This does not require a certificate as strong evidence; however, the defendant party in a land dispute can show that they have cultivated and cultivated the land for twenty to thirty years.³

Regulatory provisions such as the UUPA, PP No. 63 of 2013 on the National Land Agency, and the Civil Code (KUHPperdata), give local governments the authority to settle land disputes: Local governments and the government have the authority to resolve land disputes, which can be done through special institutions or through legislation that regulates these provisions, the position of land rights certificates is very important in the

³ James Julianto Irawan, Surat Berharga Suatu Tinjauan Yuridis dan Praktis, (Jakarta: Prenadamedia Group, 2014), h. 197

control of land rights, because it serves as strong evidence of land rights. To determine its validity, the owner of a land right must present a valid document, such as a certificate of ownership (SHM), a certificate of building use rights (HGB), or a certificate of management rights.

In Indonesia, there are many types of land ownership proof letters, one of which is the SHM, which is a certificate that shows that a person actually owns all the rights to the land or land. Land rights, according to Article 20 of UUPA No. 5/1960, are the strongest, most comprehensive and hereditary rights that can be held by any individual who owns land. As a result, this proof leaves the landowner with no legal issues or conflicts. The SHM contains information such as the name of the owner, land area, property location, drawing of the land form, name of the object or neighbor of the land owner who is directly adjacent, date of certificate determination, name and signature of the responsible official, and stamp as SHM contains information such as the name of the owner, land area, property location, drawing of the land form, name of the object or neighbor of the land owner who is directly adjacent, date of certificate determination, name and signature of the responsible official. Hak Guna Bangunan (HGB) is a right granted to individuals to build on land that is not their own. Only Indonesian citizens can own a SHM, and foreigners cannot. HGB is valid for 30 years, and can be extended for up to 20 years, and this right can be transferred to another party. HGB can be granted to Indonesian legal entities and Indonesian citizens. HGB land reverts to state land or management rights after the granting, extension, and renewal period ends. Third, land rights granted to legal subjects to cultivate land directly controlled by the state for a certain period of time are known as HGU. HGU can be granted on land with a minimum area of 5 hectares, and if the area is more than 25 hectares, proper capital investment and good business techniques are required. HGU can be granted for a maximum of 25 years, and companies that require more time can be granted for a maximum of 35 years. HGU can only be owned by legal entities established under Indonesian law, domiciled in Indonesia, and Indonesian citizens. Within one year, the HGU must be relinquished or transferred to a qualified party if the owner does not meet the requirements. Fourth, Hak Pakai refers to the right to utilize and benefit from land directly controlled by the government or owned by other individuals. It is granted authority and responsibility in an agreement made with the landowner-not a lease or land treatment agreement or by the official authorized to grant it. All these agreements do not contradict the basis and provisions of this law. The person who has the right of use can be an Indonesian citizen (WNI), a foreigner domiciled in Indonesia, a legal entity established and operating in

Indonesia, or a foreign legal entity having representation in Indonesia. Fifth is the girik, which only contains evidence of tax payment on the land in question to the Colonial Authority and refers to land that has not been certified. Merely a proof of tax payment, girik land does not indicate ownership or rights to the land. To change the status of girik land to state-owned land (SHM), it is necessary to go through the procedures stipulated by the Basic Agrarian Law (UUPA). The process is straightforward and the cost depends on the amount of tax to be paid. Girik land can be converted into SHM to provide legal title status and prevent disputes. Finally, Petok D is a land certificate that shows uncertified land on which taxes have been paid to the colonial government. Petok D status does not indicate ownership or legally recognized land rights; It was only a proof of tax payment after the UUPA was implemented. To change the status of girik land to SHM, it is necessary to follow the procedures set out by the LoGA.

2. The Position of Land Rights Certificates Can Be Explained Through Several Aspects

In the Republic of Indonesia, written regulations have been established that are legally recognized where the law as positive law, and used as a legal basis in various procedures, activities or practices, such as land tenure certificates are regulated in various written regulations, as follows: Law No. 5/1960 on the Basic Regulation of Agrarian Principles (UUPA) grants local governments the authority to resolve land disputes, as outlined in its Duties and Authorities. It emphasizes the government's responsibility for land affairs, including dispute resolution. The multiplicity of land certificates due to discrepancies in registration maps underscores the challenge of land ownership documentation. Additionally, the UUPA allows individuals without certificates to maintain land rights based on cultivation evidence for up to thirty years. This highlights a shift towards tangible proof rather than strict reliance on certificates in dispute resolution. Further regulations such as Government Regulation No. 63/2013 and the Civil Code (KUHPerdata) complement the UUPA, regulating the authority of local governments in resolving land disputes. Ultimately, dispute resolution involves both local and central government intervention, subject to legal provisions. Landowners must present valid documents used for validity. The laws and regulations governing land in Indonesia are as follows:

The resolution of land disputes in Indonesia is governed by a combination of constitutional provisions and legislative frameworks. According to the Constitution of the Republic of Indonesia (UUD 1945), local governments are empowered to resolve land

disputes. This authority is further solidified by Law No. 5 of 1960 on the Basic Regulation of Agrarian Principles (UUPA), which designates the government as responsible for land issues and grants it the authority to settle disputes. Government Regulation No. 63 of 2013 on the National Land Agency (BPN) specifically empowers local governments in the resolution of land disputes. Additionally, Government Regulation No. 18/2021 on Management, Land Rights, Residential Units, and Land Registration (PP 18/2021) establishes limitations on building use rights on freehold land, including a maximum duration of 30 years with the option for renewal. Further clarification on the authority of local governments regarding land matters is provided by Law No. 23/2014 on Regional Government. Together, these legal instruments delineate the roles and responsibilities of local governments in resolving land disputes within the Indonesian legal framework. There may be a land dispute because the land has not been plotted at BPN and the certificate holder does not have legal rights to the land.

D. Conclusion

UUPA is a product of the changes in agrarian law made by the government after independence and was created by many parties working together to regulate the basic control and ownership of land in Indonesia, including natural resources. UUPA contains the basic foundation for the creation of a national agrarian law, unity and simplicity in defense law, and provides legal capacity regarding land rights for communities, land title certificates, and other land rights. The process involves visiting a BPN office and bringing the necessary documents, filling out a form, verifying the documents with a BPN officer, and then waiting for the process of installing land boundaries. Multiple land disputes often occur due to people's ignorance of land registration rules and the proof of land certificates, weak rules regarding land registration, negligence when doing land sale and purchase transactions (not careful), and the last is the existence of the land mafia that sells land illegally not in accordance with legal provisions. To avoid double certificates, land registration maps at BPN can be seen to ascertain whether the land has been certified. After a land sale transaction, immediately transfer the name of the certificate at the local land office. In addition, the certificate holder can be seen to find out which certificate was issued first. However, if two parties have multiple certificates, there are three ways to resolve the dispute: deliberation on the condition that all requirements are met; arbitration and alternative dispute resolution; or court channels to resolve land ownership disputes. In recent years, the variety of land ownership proof letters in Indonesia has changed, such as SHM, HGB, HGU, Hak Pakai, Girik, Petok D, and Letter C. As the land mafia has used

various tactics to trap people who want to buy illegal land, the public is expected to be more careful when buying land. In addition, the National Land Agency should make various efforts to improve the validity of land data, so that there are no more certificates with different owner names.

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