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THE ROLE OF LAND DEED MAKING OFFICIALS IN LEGAL SETTLEMENT OF COMPLETE SYSTEM LAND REGISTRATION CERTIFICATES THAT OVERLAP IN SALE AND PURCHASE TRANSACTIONS IN TABANAN REGENCY

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Abstract

Registration of Complete Systematic Land (PTSL) is the process of registering land for the first time. This Complete Systematic Land Registration is one of the government programs due to the large number of uncertified land. However, Complete Systematic Land Registration still encounters many problems in the field such as overlapping certificates. Overlapping certificates can hinder the process of transferring rights such as hindering the registration of the transfer of land rights carried out by a Land Deed Official (PPAT). This research uses theory of legal certainty, the theory of legal protection and the theory of usefulness with empirical legal research. The legal consequence if the certificate of sale and purchase object overlaps is that the certificate cannot be used as valid proof of ownership of a piece of land. In the case discussed here, the certificate issued in recent years must be cancelled first by submitting a request for cancellation of the certificate, then the certificate issued earlier will be processed for division according to the area of each ownership certificate (SHM) of the cancelled PTSL and processed to be in the name of each party. The role of PPAT in resolving overlapping land ownership certificates is by calling the parties whose certificates overlap, asking for the chronological origin of the rights application so that a duplicate certificate can be issued, and conveying it to the local Land Office to provide a solution to the problem of overlapping certificates.

Keywords: Certificate; Land Deed Making Officer; Land Registration Complete System; Overlap

1. INTRODUCTION

The land is the uppermost surface of the earth. The relationship between humans and land is very close and is used as a place to live and earn a living for human life. Every human being needs land for daily life, even when they die, humans still need land. The existence of land cannot be separated from all human behavior itself, because land is a place for humans to live and continue their lives (Sutedi, 2006). Land is also one of the absolute human needs, meaning that human life is greatly influenced and determined by the existence of land (Hartanto & Thamrin, 2014).

Land is something that has a very important value in the life of society, because land is synonymous with the

survival of society. Land not only functions as a place to live, but can also be a source of livelihood. The right to land is the right to control a piece of land that can be given to individuals, groups of people, or legal entities. The types of land rights vary, such as ownership rights, business use rights, building use rights, usage rights, and so on. According to Boedi Harsono, land is a natural resource that is controlled by the state, so it needs to be preserved and can be utilized to the fullest for the prosperity of the people, both for the current generation and future generations. Land, which is called the earth's surface, can be utilized by people through the granting of rights that have been regulated in the law called land rights. Land rights include ownership rights, building use rights, business use rights, and usage rights.

(Harsono, 2007a).

Land serves to provide protection and means for the people to achieve a decent livelihood. This is in line with Article 33 paragraph (3) of the 1945 Constitution which stipulates that: The land, water and natural resources contained therein, whose control is assigned to the Republic of Indonesia, must be used for the greatest prosperity of the people. Article 33 of the 1945 Constitution of the Republic of Indonesia is the basis for national land politics which has one goal, namely for the prosperity of the people who use the mechanism of state control which is then further elaborated in Article 2 paragraph (2) of Law Number 5 of 1960 concerning Basic Agrarian Principles.

The right of ownership of land is an ancestral, strongest and fullest right that a person can have over land and gives the authority to use it for all kinds of purposes for an unlimited time, as long as there is no specific prohibition for it as regulated in Article 20 of the UUPA. The strong and administratively valid proof of ownership of the Right of Ownership of Land is in the form of a land ownership certificate issued by the authorized official in this case is the Land Office (Lubis & Lubis, 2008).

A certificate is a letter or statement in the form of a written or printed statement from an authorized person or institution as authentic evidence of an incident (Sudarsono, 2010). Sertifikat merupakan produk hukum Pejabat Tata Usaha Negara dalam hal ini Badan Pertanahan Nasional (selanjutnya disebut BPN), oleh karenanya BPN bertanggung jawab atas segala permasalahan yang terjadi berkaitan dengan sertifikat atas tanah. Sertifikat merupakan tanda bukti hak kepemilikan atas tanah. Tanah merupakan salah satu objek yang paling banyak serta paling mudah yang terkena sengketa, baik sengketa antar individu, sengketa individu dengan badan hukum, sengketa antar badan hukum, bahkan sengketa yang melibatkan pemerintah, sehingga pengaturan hukum terkait penguasaan/pemberian hak atas tanah harus dapat dimaksimalkan untuk menjamin perlindungan terhadap pemegang hak atas tanah.

To map the untitled lands in Indonesia, the government through the Land Office carries out a simultaneous land registration program known as the Complete Systematic Land Registration (hereinafter referred to as PTSL) which is the first land registration process carried

out simultaneously throughout Indonesia for all land registration objects that have not been registered in a village/urban area or simultaneously with it. PTSL is a free land certification program from the government, this is because there are still many uncertified lands. The slow process of making land certificates has been a concern of the government, so through the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) of the Republic of Indonesia, the National Priority Program was launched which is the acceleration of the PTSL.

The initial purpose of land registration rules to obtain a certificate of land ownership rights is to provide certainty and legal protection for ownership rights to land. The phenomenon that occurs in society, in several regions there are a number of cases of duplicate certificates, namely a piece of land registered in 2 (two) certificates that are officially issued by the Land Office of the District / City. As a result, there are civil disputes between the parties that must be resolved through the judicial institution. As the party authorized to issue land ownership certificates, of course, the National Land Agency (BPN) must be responsible for the issuance of duplicate land ownership certificates. This is because the only official state institution authorized to issue land certificates is the National Land Agency. The emergence of duplicate land ownership certificates will certainly cause land conflicts that can last for years, so the BPN must immediately resolve the conflict.

A duplicate certificate is a piece of land that has more than one certificate. This can result in legal uncertainty for landowners, which is highly undesirable in land registration in Indonesia. A duplicate certificate is a certificate that describes the same piece of land with two different certificate data. The duplicate certificate is where two certificates appear with the same object. And to prove the truth of both certificates, proof is carried out in the Court, in this case the State Administrative Court. Duplicate certificates can occur if the object is the same but the basis of the right is different or if the object is the same but the name, number, and basis of the right are different, or it can also be the same object and location.

The certificate can be said to be a double certificate if the land object has two different rights but one certificate while the other is a deed. In addition, if the boundaries indicated by the applicant are

intentionally or unintentionally incorrect so that the measurement letter or situational picture depicts boundaries that are not actually or partially, because a certificate has previously been issued at the same location. Double certificates on land are administrative defects in the field of land, which cause uncertainty and legal protection for parties related to it. This means that the holder of the land rights is the most disadvantaged party in this case. Cases of the emergence of double certificates certainly make people worried if they buy land, it turns out that there are two or more certificates.

The problem becomes interesting when related to someone's good faith legally regulated in Article 1338 paragraph (3) of the Civil Code (KUHPerdata). The meaning of good faith here is to act as a good person. Good faith in a very subjective sense can be interpreted as a person's honesty, which lies in a person at the time of a legal act, while good faith in an objective sense is that the implementation of an agreement must be based on norms of decency or something that is deemed appropriate in society (Permadi, 2016), a person with good faith who buys land and turns out not to know that there is a double certificate for the land he bought must certainly get legal protection. One of the cases regarding double certificates due to overlapping occurred in Tabanan Regency.

The case that occurred was a certificate issued through the PTSL program at the Tabanan Regency Land Office where this PTSL certificate had previously been registered as a collateral for a debt. Then this certificate was transferred through the buying and selling process. However, when the PPAT carried out the checking procedure at the Tabanan Regency Land Office online, it turned out that the certificate appeared to overlap with another certificate with the same object but different area, because 2 certificates had been issued on the land through the PTSL program, one of which was transacted buying and selling at the PPAT office. This certainly results in the PPAT as an official who is authorized to register the transfer of land rights cannot continue the registration of his land at the Land Office, because the certificate of the object of sale and purchase overlaps between the parent certificate and 2 PTSL certificates issued above the parent land certificate which results in legal uncertainty over the buying and selling process that occurs on the certificate of ownership of the land

that experiences overlapping.

2. METHOD

Research is basically an effort to search for something, not just observing carefully an object that is easily held in the hand. Research is a translation from English, namely research, which comes from the word *re* (back) and to search. Thus, linguistically it means searching again (Sunggono, 2003). The type of research used in discussing this issue is empirical. Empirical research according to Soerjono Soekanto's empirical or sociological legal research, which consists of research on the identification of law (unwritten) and research on the effectiveness of law (Soekanto, 2006).

3. RESULT AND DISCUSSION

Guarantee Of Legal Certainty Of Certificates As Proof Of Land Rights

Land is a human necessity because humans live, grow, and develop on it. Land, besides being a place to live, also has important meaning in human life since birth, that even when they die, it is still needed. Therefore, land has a dual function, namely as a social asset, land is a means of binding social unity among the Indonesian community for life and living, while as a capital asset, land is a capital factor in development (Arba, 2021).

Land law in Indonesia is dualistic before the enactment of UUPA, which means the application of land law that comes from customary law and also recognized regulations regarding land that comes from western law. With the enactment of UUPA, dualism of land law in Indonesia ends and a unification of land law based on UUPA applies. Land registration is an important issue in UUPA because the process of land registration is the initial process of the birth of proof of ownership of land. The purpose of land registration according to Boedi Harsono is so that from the registration process, a situation can be created where (Harsono, 2007):

People and legal entities who own land can easily prove that they are entitled to the land, what rights they have and which land is being claimed. This goal is achieved by providing proof of ownership to the respective owner.

Anyone who needs it can easily obtain reliable information about lands located in the relevant registration area (whether they are prospective buyers or creditors) who want to obtain certainty, whether the

information provided by the prospective seller or debtor is correct. This goal is achieved by providing public access to stored data.

A certificate is a strong proof of right, in the sense that as long as it cannot be proven otherwise the physical data and juridical data contained therein must be accepted as correct.

In the opinion of AP Parlindungan in his book "Agrarian Law" states that:

History of individual land ownership if only relying on memory or witness testimony is not accurate, because memory can be blurry and witnesses who lived in the same era will eventually pass away, especially in Indonesia where land has existed since ancient times, meaning that the relationship between humans and land has existed since ancient times, but because it is not written or registered, only orally known who owns the land and its boundaries, or at least one piece of land is commonly known to belong to someone or inherited by someone's heirs (AP Parlindungan, 2016).

Negative system proof can provide an opportunity for individuals or parties who feel that their rights are stronger than those contained in a certificate to claim this by submitting it to the local court with the adage that anyone who feels entitled must submit their evidence. If this is convincing, then the judge declares that the certificate is invalid, and declares the person who filed the case more entitled and convincing. Based on this, according to AP Parlindungan PP No 24 of 1997 concerning Land Registration adopts a negative system or negative publication system that is limited to 5 (five) years.

The provision of a 5 (five) year time limit for other parties to file a lawsuit after the certificate is issued to file a lawsuit in court as mentioned above, in this case the 5 (five) year time limit is appropriate based on traditional values that apply in customary society based on the concept of land ownership according to customary law because the agrarian law in Indonesia is based on customary law. Customary law is based on the reason and fact that land that is not controlled and occupied for 5 (five) years will definitely undergo significant physical changes, becoming overgrown even returning to the jungle, which is contrary to the concept of land ownership as property rights according to customary law because the rules of customary law require landowners to maintain, protect and cultivate their land

in a real way. Thus, individual ownership according to customary law not only means someone's authority over a piece of land, but also includes obligations for that person to maintain and cultivate the land they possess. If the landowner fails to fulfill their obligation to maintain the land they possess, then their right to ownership of the land can weaken or even disappear.

The provisions in the UUPA above regulate that a certificate as a land registration product is a strong evidence tool that shows that if one day there is a dispute related to the provisions contained in the certificate on the land, this dispute is in the general court, namely the district court which is a place where someone can take legal action to fight for/claim their rights or defend those rights by submitting evidence that they have. In court, the disputing parties or anyone can question the truth of someone's land certificate. If they can prove the inaccuracy of the right to the land, the certificate can be canceled (Syarif, 2014).

The Role Of Land Deed Making Officials In Minimizing The Occurrence Of Overlap Related To Land That Will Be Carried Out By Rights Transfer Transactions At The Tabanan Regency Land Office

The PPAT is regulated in several laws, namely based on Article 1 number 4 of Law Number 4 of 1996 concerning Mortgage Rights over Land and Related Objects (UUHT), which states that The Land Deed Official, hereinafter referred to as PPAT, is a public official who is authorized to make deeds of transfer of land rights, deeds of imposition of Mortgage Rights, and deeds of granting authority to impose Mortgage Rights in accordance with applicable laws and regulations.

The provision stated in Article 1 number 24 of Government Regulation Number 24 of 1997 concerning Land Registration, regulates the definition of PPAT which is Land Deed Official, hereinafter referred to as PPAT is a public official who is authorized to make certain land deeds. Article 1 paragraph 1 of Government Regulation Number 37 of 1998 concerning the Regulation of the Position of Land Deed Officials which was later amended by Government Regulation Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 that the term Land Deed Official, hereinafter referred to as PPAT is a public

official who is authorized to make authentic deeds regarding certain legal actions regarding land rights or Ownership Rights over Units of Flats. The existence of the PPAT position can be found in Article 26 paragraph (1) of the UUPA and Article 26 paragraph (1) of the UUPA states that buying and selling, exchanging, and other actions intended to transfer ownership rights and supervision are regulated by Government Regulation. Similarly, Article 19 of the UUPA instructs the government to organize land registration throughout the territory of the Republic of Indonesia which will be regulated by Government Regulation Number 10 of 1961 concerning Land Registration, which was later replaced by Government Regulation Number 24 of 1997.

The provision of legal certainty in the field of land requires, first and foremost, the availability of written, complete, and clear legal instruments that are consistently implemented in accordance with the spirit and content of their provisions. In addition, in facing concrete cases, it is also necessary to organize land registration that allows land rights holders to easily prove their rights to the land they control, and for interested parties, such as prospective buyers and creditors, to obtain the necessary information regarding the land that will be the object of legal action, as well as for the Government to implement land policies.

In Indonesia, the land registration system still causes controversy. Namely, there is a civil dispute over the ownership of a piece of land. For example, during the process of transferring land rights. The parties who will transfer land rights (buying and selling land) visit the PPAT office to make a Deed of Sale and Purchase (AJB), after all the necessary documents are complete, the PPAT party will conduct an examination/check of the authenticity of the certificate to ensure the technical and juridical data conformity between the land certificate and the land book at the Land Office. PPAT also checks the certificate of land rights to ensure that the land is not in legal dispute, not mortgaged, or not being seized by authorized parties. However, sometimes there are problems that occur that prevent the transfer of rights from occurring as it should, even though a certificate check has been carried out and declared safe and clean. Before the signing of the Deed of Sale and Purchase (AJB), usually a certificate check is carried out first by the Land Deed Official (PPAT) at the local Land

Office. The results of the certificate check must be declared in accordance with the data contained in the Land Book of the Land Office or in the term safe and clean from disputes and not being pledged, so that by the PPAT it is continued to the process of signing the Deed of Sale and Purchase (AJB).

According to the opinion of Ibu Ida Ayu Paramitha Wulan Sari, SH, MKn as PPAT in Tabanan Regency based on an interview on August 21, 2023 at 1147 WITA stated that: PPAT has an important role related to the smooth process of transferring rights without problems. The role of PPAT is in the initial stage before the sale and purchase transaction is carried out, PPAT is advised to validate the validity of the certificate first through the Electronic Validation Service of the Tabanan Land Office and then continue the certificate checking process by uploading the related data of the certificate through intan.atrbpn.go.id.

The process of checking land certificates must be carried out by PPAT before the process of transferring land rights takes place. Furthermore, Ibu Ida Ayu Paramitha Wulan Sari, SH, MKn stated that the certificate checking function is to provide assurance that the certificate is free from disputes, not being used as collateral for a debt, not being seized or having undergone changes in the relevant data, so that PPAT can determine the actions to be taken related to the legal process of the certificate.

The implementation of certificate checking services is based on the provisions of Article 34 of Government Regulation Number 24 of 1997 jo Article 97 of the Minister of Agrarian Affairs/Head of the National Land Agency Regulation Number 3 of 1997. This is done to provide legal certainty guarantees for land rights to prospective rights holders as parties who need land. Checking is done by paying attention to the suitability between the land rights certificate in question with the lists available at the local Land Office.

In an interview with the head of the administrative section of ATR/BPN Tabanan district, Mr I Made Budi, SE, MH explained that the synergy between PPAT and ATR/BPN Tabanan district is very harmonious in the succession of land management and data maintenance in Tabanan district related to land objects that are indicated to be overlapping will be given socialization and open space to landowners to carry out the process of re-

measurement and follow-up on the return of land boundaries.

The online certificate checking service is a tangible manifestation of the Ministry of Agrarian and Spatial Planning/National Land Agency in implementing the Regulation of the Head of the National Land Agency Number 1 of 2010 concerning Service Standards and Land Regulation and Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 5 of 2017 concerning Electronic Land Information Services implemented by the Land Office.

The certificate verification process is carried out by PPAT before the creation of the deed that serves as the basis for the legal transfer/encumbrance of land rights. The certificate verification service is carried out using funds sourced from the community (applicant) in accordance with the provisions of the Government Regulation of the Republic of Indonesia Number 128 of 2015 concerning Types and Tariffs of Non-Tax State Revenues Applicable to the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency. The benefit of certificate checking activity is to find out the latest status of a registered/certified land area. From the results of the check, the suitability of the data on the certificate with the physical and juridical data contained in the general list of land registration can be known, so as to provide legal certainty to the community or stakeholders who need land before legal action is taken on a land area.

According to the opinion of Ibu Ida Ayu Paramitha Wulan Sari, SH, MKn as PPAT in Tabanan Regency based on an interview on August 21, 2023 at 1203 WITA stated that the process of checking SHM originating from the PTSL program is usually carried out by the plotting process and validation of SHM first, and in the validation section of the land book, it will be seen whether there is overlapping in the SHM or not, and the results of checking SHM issued through PTSL will have a note of BPHTB owed where the BPHTB owed must be removed first at Dispenda and then the process of crossing out the BPHTB owed at the Tabanan district land office will be carried out.

According to the opinion of Mrs Ni Nengah Diah Parwitasari, SH, MKn as a PPAT in Tabanan regency, based on an interview on August 21, 2023 at 1330 WITA, stated that the certificate check obtained from PTSL, if it is still listed as

BPHTB owed in the BPN system, then the BPHTB owed must be deleted first, which is done at the local finance office by completing the forms provided by the PPAT.

With the issuance of Circular Letter No 3/SE-100TU03/III/2020 dated March 20, 2020, electronic land information services have been implemented, one of which is the electronic certificate verification. However, the information contained in the electronic verification often provides inaccurate information compared to the data on the original physical certificate. Shouldn't the National Land Agency provide legal certainty regarding the validity of the data resulting from electronic or direct verification of certificates, as stated in Law No 5 of 1960 concerning Basic Agrarian Principles which mandates the government to register land throughout the Republic of Indonesia according to regulations set by the government. Online certificate checking has been carried out since April 1, 2020, previously certificate checking was done manually and had to come directly and bring documents to the Land Office and currently with the innovation and updating of data, the implementation of checking land certificate can be done online using the provided application and connected to the land office.

4. CONCLUSION

The legal consequence if the certificate of sale and purchase object in Tabanan district overlaps, the certificate cannot be used as valid proof of ownership of a land. In this case, the certificate issued in recent years must be canceled first by submitting a cancellation request, then the certificate issued earlier will be processed for division according to the area of each PTSL certificate that has been canceled and processed to be in the name of each party. And the Procedure for Requesting Measurement for Boundary Return by Parties Organized by ATR/BP Tabanan District Provides Legal Certainty Regarding Overlapping Object Boundaries Agreed Upon by the Parties.

The role of the Tabanan district PPAT in resolving overlapping land ownership certificates in Tabanan district using the theory of usefulness can be concluded that the role of the PPAT is to call for parties whose certificates are overlapping, to then ask for the chronological origin of the rights application so that a duplicate certificate can be issued, and to convey to

the local Land Agency Office to provide a solution to resolve the problem of overlapping certificate.

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