



Liability of the Office of the National Land Agency for Damages Arising from the Issuance of Multiple Land Certificates

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Abstract

In its development, the need for land has given rise to various conflicts/disputes, both between individuals and related groups. Disputes over inheritance, ownership, control without rights to land individually, even by organizations and companies, are conflicts that are becoming more and more common. In general, cases of land disputes arise because of “claims” of ownership of property rights, as well as control over land. Each disputing party feels the most entitled to the disputed land. This is as a result of the dual ownership of land certificates between each conflicting party. Dual certificates are the event that a plot of land has 2 land certificates owned by 2 different people. In principle, each plot of land has a single position in this hemisphere. No 2 plots of land have the same position. Thus, every parcel of land that has been certified or registered with the National Land Agency (BPN) should receive protection against the same registration of that parcel of land. Dual certificates on land are certificates issued by BPN due to errors in data collection at the time of measuring and mapping the land, so that dual certificates are issued which have an impact on the occupation of the land as a whole or as land owned by other people.

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Introduction

Land is one of the very basic assets of the Indonesian state, because the state and nation live and develop on land. Indonesian people position land in a very important position, because it is a major factor in increasing agrarian productivity. Land has a high economic value. The value of land is increasing day by day. This is because the demand for land is also increasing. With the rate of development of an increasingly dense population, it can cause complex problems in various fields, such as in the economic field, namely an increase in people's living standards, enabling people to be able to meet primary needs in the form of residential housing and places of business in carrying out human life. an increase in the number of people who are not balanced with the availability of facilities and infrastructure will lead to an increase in human mobility, This has had a positive impact in all sectors of recent development, especially the improvement of the economy in the

community and the increasing level of community needs, causing the need for life to increase, namely the need for housing and places of business by business people or business entities to develop their business in various fields including trade, industry, housing, finance, and other businesses.

In its development, the need for land has given rise to various conflicts/disputes, both between individuals and related groups. Disputes over inheritance, ownership, control without rights to land individually, even by organizations and companies, are conflicts that are becoming more and more common. In general, cases of land disputes arise because of “claims” of ownership of property rights, as well as control over land. Each disputing party feels the most entitled to the disputed land.

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This is as a result of the dual ownership of land certificates between each conflicting party. From the description above, it can be seen that land has a high economic value. The value of land is increasing day by day. This is because the demand for land is also increasing. Land is often used as collateral in bank loans, because of its higher nominal value, cannot be transferred, and cannot be damaged. Not infrequently, when land is currently a contest or dispute that occurs in the community because everyone will try to own and control the land which can lead to prolonged conflict.

Article 19 of the UUPA Number 5 of 19603 which was followed up by Article 3 letter a of Government Regulation Number 24 of 1997 (hereinafter referred to as PP 24/1997) concerning the Purpose of Land Registration, namely to provide legal certainty and protection to the holder of the right to a plot of land, an apartment and other registered rights so that it can easily prove itself as the holder of the right in question". Land registration will bring legal consequences in the form of a letter of proof of land rights which is referred to as a land certificate to the holder of the land rights concerned as a strong evidence. As stated in Article 32 paragraph (1) of PP 24/1997 concerning land registration that "a certificate is a certificate of proof of rights that applies as a strong proof of physical data and juridical data contained in it, as long as the physical data and juridical data are in accordance with the data contained in the letter of measurement and the book of land rights in question."

If we look closely, the land disputes that have occurred so far have broad dimensions, both horizontal disputes and vertical disputes. The most dominant vertical dispute is between the community and the government or state-owned companies and private companies. Another cause of land disputes is the high economic value of land and land is a symbol of existence and social status in the community, resulting in vertical and horizontal land conflicts. The strategic and special meaning and value of land encourages everyone to own, maintain and care for their land properly, if necessary, defend it with all their might until the last drop of blood. The roots of conflicts and land disputes that are multidimensional in nature cannot be seen as mere legal issues, but are also related to other non-legal variables, among others, the weak regulation of land certification.

In its development, the need for land has given rise to various conflicts/disputes, both between

individuals and related groups. The emergence of various problems regarding land shows that the use, control and ownership of land in our country is not yet orderly and directed. There are still many overlapping land uses in various interests that are not in accordance with their designation. In addition, the facts also show that land tenure and ownership are still unequal. There is a small group of people who own land illegally and excessively, and there is also a large group of people who only own a very limited amount of land. In fact, many do not have any at all, so they are forced to live as cultivators. Not infrequently, and not strange things, arise about the control of land by certain elements unilaterally. It can be said that disputes in the land sector never subside, in fact have a tendency to increase in the complexity of the problems and their quantity along with the dynamics in the economic, social and political fields (Syarif, 2012). Complaints about land issues are basically a phenomenon that questions the truth of a law related to land. This can be in the form of land products, history of land acquisition, control, ownership, use and utilization of land, land acquisition and so on. Almost all aspects of land can emerge as a source of land disputes, such as 335

misrepresenting land boundaries or wrongly granting inheritance. Therefore, land needs to be regulated as well as state institutions that are specifically involved and authorized in land affairs or land handling problems. Based on the description above, the researcher will discuss the problem of how the form of accountability of the Jayapura City National Land Agency office for losses arising from the issuance of double certificates?

Literature Review

Dispute Resolution Theory

According to Rusmadi Murad (1991) land rights disputes, namely: the emergence of legal disputes is started from a complaint by a party (person/entity) containing objections and claims for land rights, both on land status, priority, and ownership in the hope of obtaining a settlement in an amicable manner. administration in accordance with applicable regulations. Furthermore, according to Rusmadi Murad, there are several types of land disputes, namely:

- a. Problems or issues concerning priorities to be applied as legal rights holders to land with rights status, or to land for which there are no rights.

- b. A rebuttal to a basis of rights/proof of acquisition used as the basis for granting rights (civil).
- c. Mistakes or errors in granting rights caused by the application of regulations that are less or incorrect.
- d. Disputes or other problems that contain practical/strategic social aspects.

According to the Regulation of the Minister of Agrarian Affairs/Head of BPN Number 1 of 1999 concerning Procedures for Handling Land Disputes, Article 1 point 1: Land disputes are differences of opinion regarding the validity of a right, granting of land rights, and registration of land rights including the transfer and issuance of proof of rights, between interested parties and between interested parties and agencies within the National Land Agency (Regulation of the Minister of Agrarian Affairs/Head of BPN Number 1 of 1999).

In giving the meaning of land disputes, there are two interrelated terms, namely land disputes and land conflicts. Although these two terms are land cases, in the Regulation of the Head of BPN Number 3 of 2011 concerning Management of the Assessment and Handling of Land Cases, it is clear to distinguish the meaning of the two terms. In Article 1 point 2 it is explained that (Regulation of the Head of BPN Number 3 of 2011): Land disputes, which are abbreviated as disputes, are land disputes between individuals, legal entities, or institutions that do not have a broad socio-political impact. Meanwhile, land conflicts, which are abbreviated as conflicts, are land disputes between individuals, groups, groups, organizations, legal entities, or institutions that have a tendency or have had a broad socio-political impact.

Furthermore, in the Technical Guidelines Number 01/JUKNIS/DV/2007 concerning Mapping of Problems and Roots of Land Problems, it is stated that: Disputes are differences in values, interests, opinions and or perceptions between individuals and or legal entities (private or public) regarding the status of ownership and or status of ownership and or status of use or utilization of certain land parcels by certain parties, or status of State Administration decisions concerning control, ownership and use or utilization of certain land parcels. Meanwhile, conflicts are values, interests, opinions and or perceptions between citizens or community groups and or citizens or community groups with legal entities (private or public), the community and the community regarding the status of control and or ownership status and or the

status of the use or utilization of land parcels. by certain parties, or the status of the use or utilization of certain land parcels and contains political, economic and socio-cultural aspects.

Dual Certificate

According to Ali Achmad Chomzah (2002), multiple certificates are defined as certificates that describe the same parcel of land. Thus, one plot of land is described with 2 (two) certificates or more with different data. This is usually referred to as overlapping certificates, either overlapping the entire plot or overlapping part of the land.

Dual certificates are the event that a plot of land has 2 land certificates owned by 2 different people (Hadjon, 1987). In principle, each plot of land has a single position in this hemisphere. No 2 plots of land have the same position. Thus, every parcel of land that has been certified or registered with the National Land Agency (BPN) should receive protection against the same registration of that parcel of land. Dual certificates on land are certificates issued by BPN which are due to errors in data collection when measuring and mapping the land, so that dual certificates are issued which have an impact on the occupation of the land as a whole or as land owned by other people. If viewed from the meaning of the certificate itself, the certificate is a proof of land rights, which is issued by the government in the context of carrying out land registration according to the provisions of laws and regulations (Chomzah, 2007). In fact, that a person or a legal entity physically controls and uses the land in question does not necessarily prove that he has rights to the land in question. The existence of buying and selling letters does not necessarily prove that the purchaser actually has the right to the land he bought. Moreover, there is no authentic evidence that the seller is entitled to the land he sells. It is in this context that illegal occupation of land occurs through evidence in the form of documents (certificates) whose legal certainty cannot be guaranteed. From the above opinion, it can be said that a dual certificate is a certificate of ownership obtained either legally or illegally which at any time can cause legal consequences (disputes) for the subject of the right or the object of the right. A dual certificate is a proof of ownership of land rights issued by a legal institution (BPN) consisting of one object of rights that overlaps one object of land in part or in whole, which can result in legal consequences.



It is in this context that illegal occupation of land occurs through evidence in the form of documents (certificates) whose legal certainty cannot be guaranteed. This dual certificate occurs because the certificate is not mapped in the land registration map or the situation map of the area. If a land registration map or a situation map at each Land Office is made, and/or a situational map is drawn up/a measurement letter is made on the map, the possibility of duplicate certificates is very small. In the discussion of the definition of dual certificates as described above that the underlying reason for the occurrence of double certificates is the result of recording errors when the officers carry out measurements and mapping, while the same thing as mentioned by Sugiarto said that double certificates are certificates issued by more than one in one field. land by the Land Office, resulting in overlapping ownership of land parcels, in whole or in part (Sutedi, 2013).

According to Ali Achmad Chomzah (2007) in his book, what are not included in the category of double certificates are certificates issued in lieu of lost certificates, certificate issued, in lieu of a damaged certificate, and certificates issued, in lieu of canceled certificates. This is because the certificates in question (lost, damaged or canceled) have been declared and are not valid as evidence.

Legal Basis for Settlement of Land Rights Disputes

The Basic Agrarian Law, especially Article 2 regarding the state's right to control land, has explained that the powers of the state are to regulate and administer the designation, use, supply and maintenance of earth, water and space, to determine and regulate the rights that can be had on earth, water and space, and to determine and regulate the rights that can be had on earth, water and space.

As a result of the above conditions, it is clear that the authority to grant these rights is exercised by the Government, but in the exercise of this authority, of course, there are many kinds of land problems, one of which can result in disputes or disputes over land rights, in this case it can be seen the role of the National Land Agency as a government agency that has duties and functions in dealing with land problems that occur in people's lives.

Since the handling of land issues was under the auspices of the Directorate General of Agrarian Affairs at the Ministry of Home Affairs until the formation of the National Land Agency, several

provisions were used as the basis or operational basis for resolving legal disputes over land rights by the Conflict, Dispute and Case Handling Section, as follows: Government Regulation Number 10 of 1960 concerning Land Registration amended by Government Regulation Number 24 of 1997. Decree of the Minister of Home Affairs of the Directorate General of Agrarian Affairs dated October 4, 1983 Number SK. 245/DJA/1983 which was enhanced by Decree dated October 28, 1985 Number 18/DJA/1985 concerning the formation of a task force team to resolve problems or disputes over land rights of the Directorate General of Agrarian Affairs, Presidential Decree Number 26 of 1988 concerning the National Land Agency, Decree of the Head of the National Land Agency Number 1 of 1989 concerning the Organization and Work Procedure of the Regional Office of the National Land Agency in the Province and the Land Office in the Regency/Municipality.

Therefore, in order to improve services to the community, especially in the field of agriculture, based on some of the descriptions above, it can be said that the settlement of land rights disputes in essence cannot be separated from the duties and functions of BPN in dealing with land issues which in this case are indeed require serious and consistent handling.

The forms of dual certificates are both or more certificates are genuine but one of them is genuine but fake. This means that both have a copy/archive at the Regency/City Land Office. This can happen because a parcel of land that has been certified is re-registered at the Land Office, so both are indeed original BPN products but the object/plot of land is the same in terms of location, position and area. Both certificates are fake, meaning that the two certificates do not have a copy at the Land Office/BPN or there is no archive. One or more of these certificates is part of another certificate. This happens because the registered land parcels should be registered through the process of splitting the parent certificate, or vice versa, the issuance of one certificate should be a combination of several other certificates. There is overlapping, meaning that there are two or more certificates that overlap with each other so that the overlapping part is a double certificate, because part of the land is included in another certificate. The description related to Overlapping is as follows:

- a) Overlap completely
- b) Partial Overlapping
- c) Completely Overlap



Results

The Role of the National Land Agency in the Settlement of Dual-Certified Land Disputes The legal basis for the establishment of the National Land Agency (BPN) is Presidential Decree No. 26/1988. As an operational guide for the BPN, then the leadership of this institution issued a Decree as outlined in SK No. 11/KBPN/1988 jo. Decree of the Head of BPN Number 1 of 1989 concerning the Organization and Work Procedure of BPN in the Province and Regency/Municipality. The Minister of Agrarian Regulation Number 11 of 2016 states, what is called a land case is a dispute, conflict, or land case to get a settlement in accordance with the provisions of laws and regulations and/or land policy. mediation, and facilitating the handling of the parties to the dispute and initiating an agreement between the parties. In order to minimize land disputes which in this case are caused by multiple certificates, the roles performed by BPN as public servants in the land sector include managing data to resolve cases in the land sector, accommodating lawsuits, preparing response memorandums, preparing appeal memorandum, counter memorandum, cassation memorandum, cassation review memorandum on cases filed through the courts against individuals and legal entities that are detrimental to the state, collecting data on land issues and disputes, reviewing and preparing draft decisions regarding land dispute resolution, reviewing and preparing the concept of cancellation of administratively flawed land rights based on the power of court decisions, and documentation.

BPN also has certain mechanisms in handling and resolving land dispute cases, in this case including disputes due to dual certificates, namely land disputes are often known by BPN through complaints, complaints are then followed up with problem identification. Ensure whether the problem element is under the authority of BPN or outside the authority of BPN. If it is the authority of BPN, then BPN will examine the related issue to prove the truth regarding the complaint and determine whether the complaint can be processed further. If the problem is strategic, it is necessary to form a work unit. if it is political, social, and economic in nature, the team involves institutions such as the DPR or DPRD, the Ministry of Home Affairs, or the relevant Regional Government. Lastly, the team compiles a report on the research results to become a recommendation for problem solving.

Based on the results of the research conducted by the researcher, the form of the liability of the Jayapura City National Land Agency office for the losses arising from the issuance of multiple certificates containing administrative legal defects related to the existence of elements against material law. The element of an unlawful act can be interpreted as something that violates the law of the person committing the act, contrary to the legal obligations of the person committing the act regarding other people's goods and harming other people, namely the revocation/cancellation of the State Administrative Decree in the field of Land by the Head of the National Land Agency. where the administrative law defects according to Article 107 of the Minister of Agrarian Regulations of the Head of BPN No. 9 of 1999 is a procedural error, an error in the subject and object of the right, an error in the type and calculation of the right and the overlapping of the land. Civil sanctions that can be applied by the Land Office due to inaccuracy and inaccuracy in conducting and checking physical data, juridical data are subject to sanctions in articles 1365 and 1366 of the Civil Code which affirms those cases. Article 1365 stated that every unlawful act, which brings harm to another person, requires that loss, compensate for the loss. Article 1366 reads everyone is responsible not only for losses caused by his actions, but also for losses caused by negligence or carelessness.

Related to cases of negligence from officials is the existence of criminal violations in the land law in the manufacture of physical data and juridical data carried out by several related parties such as the Head of the Land Office, the sub-district head, and people who apply for rights, in the Criminal Code found provisions to arrest criminals in the field of land registration, among others, by using Article 423 Jo. Article 424 paragraph (1) of the Criminal Code and Article 55 of the Criminal Code regarding participation (delneming) Jo. Article 385 of the Criminal Code concerning fraudulent acts (bedrog). This means that in the three articles, it is an official who intends to benefit himself and others who participate in helping to neglect the duties and authority of an official in using his power to commit a criminal act. The case of physical data that is not in accordance with the actual situation in the field is suspected to be an indication of negligence from the apparatus who made the boundaries or benchmarks in the land book concerned, so it needs to be re-examined later whether the act has been replaced with other standards that are not in



accordance with the original size. The act in question is an indication of the destruction of goods which can be threatened by Article 406 and Article 407 paragraph (1) of the Criminal Code. Administrative sanctions that create a deterrent effect. The Head of the Land Office who has been proven guilty of issuing multiple certificates may be subject to the most severe administrative sanction is dismissal from office. The threat of sanctions for dismissal from his position as Head of the Land Office will always be careful in issuing land rights certificates.

If the settlement must go through legal channels in accordance with applicable provisions, it can be ascertained that the parties require additional costs, especially using the services of legal advisors, the costs required are sometimes beyond the ability of the service user, while the expected results are not always in their favor. The decision of the Panel of Judges, both the Panel of Judges of the District Court, and the Panel of Judges of the State Administrative Court which has the authority to cancel the decision of a state official in this case canceling one of the certificates of property rights, it is impossible to win both parties, one of them must lose and the loser feels has been harmed, although there are still legal remedies that can be taken, the loser still feels aggrieved. If the loss of the losing party is caused by negligence, inaccuracy and or intentionality on the part of the National Land Agency, then the one who is morally and materially responsible is the National Land Agency itself. The application for compensation can be submitted by filing a lawsuit through the local District Court.

Conclusion

Based on the results of the study, it can be concluded that the form of accountability of the Jayapura City National Land Agency office for losses arising from the issuance of dual certificates containing administrative legal defects, namely the revocation/cancellation of the State Administrative Decree in the Land sector by the Head of the National Land Agency, and civil sanctions in the form of compensation that can be applied by the Land Office due to inaccuracy and inaccuracy in conducting and checking physical data.

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